The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Mohamedali,Walla
Student#: 37349180

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Winter 2023	**(January 11, 2023 To May 04, 2023)**							
LAW	643	001	Crim Procedure: Bail to Post Conviction Review	Barbara Mcquade	3.00	3.00	3.00	B+
LAW	716	001	Complex Litigation	Michael Leffel	4.00	4.00	4.00	A
LAW	776	001	Financ Mkts: Reg, Pol'y &Trans	Veronica Santarosa	4.00	4.00	4.00	A
LAW	900	393	Research	Patrick Barry	1.00		1.00	S
Term Total				**GPA: 3.809**	**12.00**	**11.00**	**12.00**	
Cumulative Total				**GPA: 3.663**		**46.00**	**56.00**	
Fall 2023	**(August 28, 2023 To December 15, 2023)**							
Elections as of:		06/02/2023						
LAW	475	001	Psych-Informed Lawy/ Clin Prac	Joshua Kay	1.00			
LAW	677	001	Federal Courts	Gil Seinfeld	4.00			
LAW	767	001	Mediation	Nakisha Chaney	3.00			
LAW	972	001	Federal Appel Litig Clnc I	Melissa Salinas	5.00			

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Total Number of Pages 2

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UNIVERSITY OF MICHIGAN LAW
625 South State Street
Ann Arbor, MI 48109

NICHOLAS BAGLEY
Professor of Law

June 15, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I'm writing to recommend Walla Mohamedali for a clerkship. Walla is an excellent law student and will make an outstanding clerk.

Walla was a student of mine in Civil Procedure, where he stood out for his low-key demeanor and willingness to bat around ideas when I cold-called him. I could tell he was sharp, and I wasn't disappointed when I reviewed his exam. He earned an A- in a sharply curved, 80-person class, and his answer to the first question in particular was excellent—the highest in the class.

That question probed the students' understanding of the overlap between specific and general jurisdiction, and pushed them to consider a case of a company that sold some of its products in California but not the product that caused the injury in question. Had the company purposefully availed itself of the state, even though an independent third party had brought the injury-causing product into the state? The defendant "will argue," Walla wrote, that

> there must be an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State." Bristol-Myers. They will contend that McFly here is akin to the non-California residents in Bristol-Myers who weren't prescribed and didn't buy Plavix in California.

But Walla was unconvinced. "Even though the didn't purchase the in California, the accident did occur there, and the state is a big market for [the defendant]. This isn't like World-Wide Volkswagen—[the defendant did] purposefully avail themselves of the California market." That's some high-quality argument-by-analogy on a time, four-hour exam. And I can share that very, very few of Walla's classmates were up to the task.

Walla graduated from the University of Houston summa cum laude with a degree in math. Anyone who gets a degree in math is presumptively brilliant in my book, and Walla has done nothing to disabuse me of my presumption. He's also a great guy—thoughtful, engaged, and completely down to earth.

I encourage you to give Walla's application a close look. Please don't hesitate to reach out if you have any questions.

Best regards,

Nicholas Bagley

Nicholas Bagley - nbagley@umich.edu - 734-615-7049

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109

June 06, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I am writing to recommend Walla Mohamedali for a clerkship in your chambers. Walla is an analytical thinker, an excellent writer, and a diligent worker, and would make an outstanding law clerk.

I first got to know Walla when he was a student in my first year Criminal Law class. In that class of approximately 80 students, Walla stood out as someone who was deeply engaged in the course material and eager to discuss issues of law and policy. I later had the pleasure of having Walla in my Advanced Criminal Procedure course, and once again, he consistently made meaningful contributions in class. Walla is a sharp analyst of legal issues and an excellent writer, as reflected in his success in my classes and other courses.

Walla's prior experiences signal a likelihood of success as a law clerk. During college, he studied math and psychology, a background that no doubt contributes to his ability to analyze problems in a methodical and disciplined way. He also served as a tutor for other students, which requires breaking down large problems into smaller, solvable components, a skill that translates well to explaining legal issues in bench memos or draft opinions. As a law student, Walla interned for a federal district judge in the Eastern District of New York, an opportunity that gave him insight into the work of a court and inspired him to serve as a law clerk. During his summers in law school, Walla has worked in law firms, which has given him visibility into litigation matters that come before courts. All of these experiences position Walla to excel as a law clerk.

I previously served as U.S. Attorney for the Eastern District of Michigan. In that role, I had the opportunity to hire more than 60 lawyers, and Walla has the kinds of qualities that I would look for in a new hire—a strong intellect, an ability to work with others respectfully, and effective communication skills. Walla possesses all of these qualities in abundance, which will make him a tremendous resource as a law clerk.

I know from my own experience as a law clerk that a judge's chambers can be like a family, so it is important to bring in clerks who will get along with others, respect confidences, and perform every task with enthusiasm and excellence. I think Walla is very well suited to succeed in this environment. He will be an able assistant to any judge who hires him as a clerk. He has the intellectual capacity to tackle and solve challenging legal problems, he can express his ideas effectively in writing, and he will be a wonderful colleague.

For all of these reasons, I enthusiastically recommend Walla Mohamedali for a clerkship in your chambers. Please let me know if I can provide any additional information.

Sincerely,

Barbara L. McQuade

Barbara McQuade - bmcquade@umich.edu - 734-763-3813

AZA

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Your Honor:

I understand that Walla Mohamedali is applying to you for a clerkship for 2024-2025. I know him well and think very highly of him, and I am delighted to recommend him for your chambers.

Walla was part of our summer associate class at Ahmad, Zavitsanos & Mensing, or AZA, last summer, following his 1L year. At AZA, when hiring summer associates, we look not just for students' academic credentials in law school and as undergraduates, but also for evidence that they are go-getters and can overcome adversity. As a then-20-year-old first-year student excelling at Michigan Law, Walla was a perfect example of the type of student we were looking for.

Speaking from both experience working directly with him on cases and from speaking with my colleagues, Walla was a fantastic summer associate last summer and we are delighted to be bringing him back this August. As a summer associate, he always turned in research that was thorough and timely, and clearly thought through issues before returning work product. But where he truly shined was in his willingness and ability to handle substantive oral and writing projects. Walla was tasked early in the summer with putting together a presentation for a mediation conference in a multi-million-dollar dispute and delivering part of the presentation in front of the client and opposing counsel. The case settled favorable shortly thereafter.

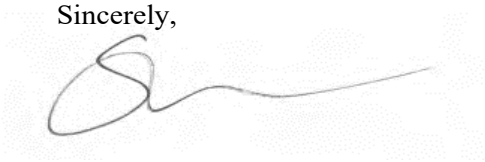
Walla also handled large, substantive writing assignments extremely well. In relation to an employment dispute in Delaware, Walla wrote a judgment on the pleadings that was filed virtually unchanged. He laid out the facts simply and concisely and explained the law thoroughly and persuasively.

Walla took on his biggest project last summer when I asked him to draft the complaint in a unique corporate governance dispute on behalf of Ben & Jerry's. The case moved on an extremely expedited timeline and Walla did a great job of turning the complaint around within 48 hours to be filed in conjunction with a temporary restraining order. Walla accomplished this while juggling calls with Ben & Jerry's Board of Directors and speaking one-on-one with clients to ensure that he painted a comprehensive picture in the complaint. His complaint was so powerful that a member of Ben & Jerry's Board remarked that she teared up while reading it because it conveyed the board's perspective and story so well. Walla managed this hectic period and traveled across town to collect necessary documents (despite not having a car) over the July 4th weekend. Walla's dedication is truly unmatched.

Walla is a strong and careful thinker, a clear writer, and, most of all, a genuine person. He has been an exceptional summer associate at AZA, and I am fully confident that he will be an excellent lawyer. His attitude and the quality of his work make me fully confident that he will be an excellent law clerk, too. I am pleased to give him my highest recommendation.

If you have any questions or would like to discuss Walla further, please feel free to reach out.

Sincerely,



Shahmeer Halepota

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Writing Sample

I prepared this brief in support of a motion for judgment on the pleadings during the summer of 2022 while a summer associate with Ahmad, Zavitsanos & Mensing. I have permission to use this as a writing sample. This draft reflects very light editing from the associate who assigned it to me.

Cover Sheet.docx

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERIN PAGE, Plaintiff, v. VILLAGE PRACTICE MANAGEMENT GROUP, LLC, Defendant.	)))))))))	C.A. No. 2022-_____

OPENING BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

POTTER ANDERSON & CORROON LLP

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Dated: July XX, 2022

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CASES

Plaintiff Erin Page ("Ms. Page") hereby submits this Opening Brief in Support of her Motion for Judgment on the Pleadings, respectfully showing the Court as follows:

INTRODUCTION

Defendant VILLAGE PRACTICE MANAGEMENT COMPANY, LLC ("VPM") refuses to accept that provisions related to a restrictive covenant contained within VPM's Management Incentive Plan are unambiguous. These provisions unambiguously apply only to current employees, and do not extend to post-employment activities. "Delaware law is contractarian; it respects the rights of parties as set forth in written contracts, and if unambiguous, enforces them as written." *Matter of Estate of Sullivan*, 2021 WL 4203216, at *3 (Del. Ch. Sept. 16, 2021). As such, this Court should declare the relevant provisions of the Management Incentive Plan to be, and enforce them, exactly as they are written.

Ms. Page and VPM are parties to the Management Incentive Plan, pursuant to Ms. Page's role as Chief Operating Officer of VPM from October 2020 to March 2022. Pertinent to this case, the Management Incentive Plan contains certain provisions that provided specific, limited restrictions on Ms. Page during her employment with VPM. Specifically, Section 8(b) of the Management Incentive Plan (the "'Detrimental Activity' provision") provides:

> Commission of Detrimental Activity by Participant. Unless otherwise determined by the Committee and set forth in the applicable Award Agreement, an Award shall terminate and be cancelled for no consideration on the date on which the Participant engages in a Detrimental Activity.

(Compl., ¶ 32).

When this section is read with the relevant definitional provisions in Section 2, it becomes clear that the Detrimental Activity provision does not apply to post-employment

activities. Most relevant are Sections 2(u), 2(p), and 2(m), which define "Participant," "Employee," and "Consultant" as follows:

- "Participant" shall mean any Employee or Consultant designated by the Committee to participate in the Plan.
- "Employee" means any person who *is employed* (within the meaning of the Code and regulations and interpretive guidance issued thereunder) by the Company or any Subsidiary and provides services to or for the benefit of the Company.
- "Consultant" means any individual who *is engaged* by the Company or a Subsidiary of the Company to render consulting or advisory services to or for the benefit of the Company and who is not an Employee.

(Compl., ¶¶ 36-38 (emphasis added)).

The plain language of the Management Incentive Plan provisions speaks for itself: The Detrimental Activity provision applies only to *current* VPM employees and consultants. These terms are defined unambiguously, and their contractual definitions should control.

SUMMARY OF UNDISPUTED FACTS

VPM is a healthcare provider and developer of primary care clinics. VPM operates primary medical care clinics where patients obtain direct primary care services such as prevention, annual wellness checkups, and chronic care management. Ms. Page joined VPM as a consultant in the Fall of 2018 and became a full-time employee in 2019 as President of the Texas market for risk operations. Due to her excellent performance, Ms. Page quickly climbed the ranks at VPM and, in December 2019, VPM promoted her to the national role for risk operations. Then, in October 2020, Ms. Page became VPM's Chief Operating Officer.

During her tenure with VPM, Ms. Page helped the company grow from no organic clinic locations to approximately 150 such locations, along with plans to add an additional 120 organic clinics in 2022. Much of this growth occurred as part of VPM's engagement with Walgreens, which Ms. Page had a significant role in procuring.

VPM compensated Ms. Page, in part, with company stock pursuant to its Management Incentive Plan. According to Section 1 of the Management Incentive Plan, these stock awards were meant to incentivize VPM's employees to make the company successful and to reward the outstanding contributions of certain employees. Pursuant to the terms of the award agreements, Ms. Page's Class B units vested pursuant to the following schedule:

- 25% of units vest on the one-year anniversary of the award date; and
- The remaining 75% of units in 36 successive equal monthly installments beginning 30 days after the one-year anniversary of the award date.

Ms. Page has redeemed certain of her vested Class B units and no longer holds those units she has redeemed. As of the date of the filing of Plaintiff's Verified Complaint, Ms. Page holds at least 84,055 vested Class B units which have not been redeemed. Pursuant to the Management Incentive Plan and award agreements, Ms. Page's Class B units carry rights and privileges as stated in VPM's company operating agreement.

Around October 2021, Walgreens announced that it was investing $5.2 billion in VPM. Based in significant part on Ms. Page's contributions, VPM became a multi-billion-dollar company. After Walgreens made this significant investment, VPM CEO Tim Barry informed Ms. Page that VPM would be removing her role at the company. He initially discussed placing Ms. Page in another role that VPM knew was not fitting of her skills, experience, and expertise. Given the untenable nature of VPM's stance, this constituted a constructive termination.

Ms. Page sought to be flexible. She discussed the idea of a consulting role with Mr. Barry as a compromise. Ms. Page was prepared to accept such a role and continue assisting VPM. Mr. Barry later told Ms. Page, however, that VPM's board rejected the consulting role idea.

Ms. Page's employment with VPM then expired when VPM removed her position on March 12, 2022. March 12, 2022 was Ms. Page's last day of work with VPM. Following her termination, the parties again discussed a potential consultancy arrangement. This time, the discussions were centered on a short-term consultancy role that would last only a few months. Despite Ms. Page's flexibility and willingness to compromise, VPM soon ended the discussions, informing Ms. Page that VPM would not engage in any further discussions regarding a consulting role.

After VPM pushed Ms. Page out, Lightbeam Health Solutions ("Lightbeam") made Ms. Page a job offer. Lightbeam is an information technology company that offers medical providers a user interface with which to organize and access patient information. Lightbeam does not provide direct medical care, primary or otherwise, to patients, and it does not operate primary or specialty medical clinics. As such, Lightbeam is not a competitor to VPM, and, in fact, is even a potential vendor to VPM.

In the interest of transparency and good faith, Ms. Page sought to clarify the Management Incentive Plan provisions with VPM following her being pushed out. She disclosed her intended role with Lightbeam to VPM on May 20, 2022 and requested that VPM advise her whether it considered Lightbeam to be a competitor. Despite multiple follow-up attempts by Ms. Page, VPM has yet to respond to her request, even after over two months. Ms. Page now brings this motion for judgment on the pleadings, respectfully moving this Court to declare that the Management

Incentive Plan means what it plainly sets out: that Ms. Page was restricted from engaging in Detrimental Activity to VPM only during her employment with VPM.

ARGUMENT

I. Standard for Judgment on the Pleadings

The law in Delaware is clear: "the proper interpretation of language in a contract, while analytically a question of fact, is treated as a question of law both in the trial court and on appeal." *OSI Sys. v. Instrumentarium Corp.*, 892 A.2d 1086, 1090 (Del. Ch. 2006). Accordingly, "judgment on the pleadings is a proper framework for enforcing unambiguous contracts." *Lillis v. AT & T Corp.*, 904 A.2d 325, 329-30 (Del. Ch. 2006). Importantly, undefined terms do not render a provision ambiguous. Rather, "when terms of a contract are undefined, the Court may assume that the parties intended to give the terms their ordinary and customary meaning. To ascertain such meaning, the Court may refer to a recognized dictionary definition of the term." *Relax Ltd. v. ANIP Acquisition Co.*, 2011 WL 2162915, at *3 (Del. Super. May 26, 2011). "After all, the most important guide to the meaning of a contract is what the words most naturally convey." *Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 56 A.3d 1072, 1106 (Del. Ch. Ct. 2012).

"On a Rule 12(c) motion, the Court may consider documents integral to the pleadings, including documents incorporated by reference and exhibits attached to the pleadings, and facts subject to judicial notice." *Dep't of Fin. v. Univar, Inc.*, 2020 WL 6334420, at *3 (Del. Ch. Oct. 29, 2020). The critical issue in this motion is the interpretation of the plain language of Section 8(b) and Sections 2(u), 2(p), and 2(m), which are incorporated in Plaintiff's Verified Complaint. Because that issue is strictly a question of law, and the contractual provisions are unambiguous, this motion for judgment on the pleadings is the appropriate vehicle for the Court's determination of the issue.

II. The Management Incentive Plan Provisions are Unambiguous; They Do Not Apply to Post-Employment Activities

"To determine what contractual parties intended, Delaware courts start with the text." *Tygon Peak Capital Mgmt., LLC v. Mobile Investments Investco, LLC*, 2022 WL 34688, at *12 (Del. Ch. Jan. 4, 2022). "Delaware adheres to the objective theory of contracts, meaning that a contract's construction should be that which would be understood by an objective, reasonable third party. The Court will give effect to the plain meaning of the contract's terms and provisions, will read a contract as a whole and will give each provision and term effect, so as not to render any part of the contract mere surplusage. Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language." *Tetragon Fin. Grp. Ltd. v. Ripple Labs Inc.*, 2021 WL 1053835, at *3 (Del. Ch. Mar. 19, 2021).

Delaware courts interpret contracts according to their ordinary meaning. When the parties drafting the contract "do not define terms within the contract, Delaware courts may look to dictionaries to determine their plain meaning." *CM Commercial Realty, Inc. v. Alpha Tr. Real Estate, LLC*, 2022 WL 509693, at *8 (Del. Super. Feb. 18, 2022).

In this case, the terms "is employed" and "is engaged" in Sections 2(p) and 2(m) have their plain, ordinary meaning. The terms "is employed" and "is engaged" are unambiguously present tense, as opposed to past tense. Merriam-Webster, *at* https://www.merriam-webster.com/dictionary/is (last visited July 26, 2022). The contractual language is clear – the term "Participant" applies only to an employee or consultant who "*is*" employed or engaged as a consultant, not to an employee who *was* employed or engaged as a consultant. The parties contracted to restrict Ms. Page's engaging in any "Detrimental Activity" only *during* her

employment with VPM, and, as a result, the Detrimental Activity provision does not apply to her after her employment with VPM has ended. Any disagreement to the contrary does not serve to render those provisions ambiguous. *Greenstar IH Rep, LLC v. Tutor Perini Corp.*, 2019 WL 6525206, at *9 (Del. Ch. Dec. 4, 2019). Rather, those provisions remain unambiguous because those terms have an "ordinary meaning [that] leaves no room for uncertainty." *Id.* As such, the Detrimental Activity provision is not ambiguous and does not apply to post-employment activities. For the Court to ignore these provisions in the contract and rule otherwise would be inconsistent with long-existing Delaware law that this Court's interpretation must "give each provision and term effect, so as not to render any part of the contract mere surplusage, and not read a contract to render a provision or term meaningless or illusory." *See, e.g.*, *AM Gen. Holdings LLC v. Renco Grp., Inc.*, 2020 WL 3484069, at *4 (Del. Ch. June 26, 2020).

III. In the Alternative, the Detrimental Activity Provision Constitutes an Overbroad Noncompete and Should be Struck

In the alternative that the Management Incentive Plan is read to include post-employment activities for Participants, the Detrimental Activity provision constitutes – in effect – an overbroad noncompete. Section 8(b) provides that:

> Commission of Detrimental Activity by Participant. Unless otherwise determined by the Committee and set forth in the applicable Award Agreement, an Award shall terminate and be cancelled for no consideration on the date on which the Participant engages in a Detrimental Activity.

(Compl., ¶ 32.)

Section 2(n) defines "Detrimental Activity" as:

> "Detrimental Activity" means (i) the rendering of services for any Competitor; (ii) any attempt to directly or indirectly solicit or induce any employee or consultant of the Company and/or its Affiliates (or any person who was an employee or consultant during the six-month period preceding such solicitation or inducement) to be employed or perform services elsewhere; (iii) any attempt directly or indirectly to solicit the trade or business of any current customer of the Company and/or its Affiliates (or person that was a customer during the six-month period preceding such solicitation) for services similar to those provided by the Company or its Affiliates; and (iv) the breach of any Restrictive 8 Covenant by such Participant, in each case as determined by the Board in its sole discretion.
>
> (Compl., ¶ 33.)

Given the definition of "Detrimental Activity" in Section 2(n), Section 8(b) would serve as an overbroad restraint on trade if it were to apply post-employment. Specifically, in practice this provision would effectively constitute a restrictive covenant not to compete. Such covenants "not to compete [are] perhaps the most disfavored in the law because [their] effect 'is to create a limited geographic monopoly.'" *Kellam Energy, Inc. v. Duncan*, 668 F. Supp. 861, 876 (D. Del. 1987). Indeed, "[w]here a restriction on the ability to be gainfully employed is involved, the customary sensitivity of a court of equity to the particular interests affected by its remedies is heightened." *Elite Cleaning Co. v. Capel*, 2006 WL 1565161, at *3 (Del. Ch. June 2, 2006).

"When assessing the enforceability of a noncompetition agreement the Court … must determine whether the noncompetition agreement is reasonable in scope and duration, both geographically and temporally." *Id.* The Management Incentive Plan's "Detrimental Activity" provision is reasonable with respect to neither geographic scope nor duration. It provides neither a geographic radius nor a time period, which is heavily indicative that it is unenforceable. *See,*

e.g., *Caras v. Am. Original Corp.*, 1987 WL 15553 (Del. Ch. July 31, 1987) (finding the lack of a geographic limitation alone sufficient to indicate a reasonable probability that a noncompete is unreasonable and thus unenforceable). Therefore, even if the Court finds that the "Detrimental Activity" provision in the Management Incentive Plan does apply to post-employment activities, it should not be enforced on the grounds that it is an overbroad noncompete.

In the event that the "Detrimental Activity" provision is held to extend to post-employment activities and therefore represents an overbroad noncompete, the Court should not modify, or "blue-pencil," the overly broad noncompete agreement. This court has previously written that:

> "[A] court should not allow an employer to back away from an overly broad covenant by proposing to enforce it to a lesser extent that written. More importantly, a court should not save a facially invalid provision by rewriting it and enforcing only what the court deems reasonable. Doing so puts the employer in a no-lose position. If an employer knows that the court will enforce a reasonable covenant as a fallback, the employer has every reason to start with an overbroad provision."

Delaware Elevator, Inc. v. Williams, 2011 WL 1005181, at *10 (Del. Ch. Mar. 16, 2011). If the Court determines that the "Detrimental Activity" provision applies to post-employment activities, it should not permit this overbroad noncompete to be pared down.

CONCLUSION

For the reasons set forth herein, Ms. Page respectfully moves this Court for judgment on the pleadings for the purposes of interpreting and declaring the rights of the parties as it pertains to the Management Incentive Plan, specifically pertaining to Section 8(b).

POTTER ANDERSON & CORROON LLP

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Dated: July XX, 2022

Applicant Details

First Name	**Joseph**
Middle Initial	**L**
Last Name	**Mollica**
Citizenship Status	**U. S. Citizen**
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Address	**Address** Street **4850 Connecticut Ave NW** City **Washington** State/Territory **District of Columbia** Zip **20008** Country **United States**
Contact Phone Number	**5615125767**

Applicant Education

BA/BS From	**Rollins College**
Date of BA/BS	**May 2020**
JD/LLB From	**American University, Washington College of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=50901&yr=2010**
Date of JD/LLB	**May 18, 2024**
Class Rank	**50%**
Law Review/ Journal	**Yes**
Journal(s)	**American University International Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 4, 2023

Judge Juan R. Sánchez
United States District Court, Eastern District Court of Pennsylvania

Judge Sánchez's Chambers,

I am a rising 3L at the American University Washington College of Law and am interested in the judicial clerkship position with Judge Sanchez at the United States District Court for the Eastern District of Pennsylvania for the 2024-2025 term. With my legal experience and demonstrable legal writing skills, I would be a strong fit for this judicial clerkship position with Judge Sánchez. I am interested in this clerkship position because of the unique cases this Court hears as well as the invaluable writing and research experience I would gain.

The experience I gained as a legal assistant at a real estate law firm is certainly applicable to working as a summer intern for Judge Sánchez. While working as a legal assistant, the most notable task I undertook was the drafting and reviewing of legal documents, such as Estoppel and client information letters. This task was my first introduction to the world of legal writing, and I was at once intrigued. As an intern with the State's Attorney Office in Prince George's County last summer, I was able to build on my interest in legal writing by preparing a legal memorandum addressing constitutional preemption concerns surrounding the county's Back on Track Program. Drafting these documents allowed me to learn and effectively employ some basic strategies for creating a legal document, such as professional formatting, formal diction, objectivity, and courteousness.

Furthermore, the basic skills I learned as a legal assistant took on a new meaning during Legal Rhetoric. Having always been interested in the written word, Legal Rhetoric further allowed me to completely dive into legal writing. In this course, I was able to write two objective legal memoranda as well as an appellate brief. While writing these memoranda, I developed my objective legal writing to argue effectively and impartially for legal and substantive positions. While writing the appellate brief, I was introduced to persuasive legal writing and quickly learned how to credibly advocate for a legal position in a professional manner. Additionally, I am a Junior Staffer on the International Law Review, which has allowed me to develop my research, citation, and writing skills, as is shown by the Comment I wrote on the implication of conspiracy-based personal jurisdiction in international legal disputes. These writing skills will prove indispensable as a potential judicial clerk for your chambers.

Given the experience I acquired working in the legal field and the skills I have developed during law school thus far, I am a worthy candidate for this position. I am including my resume, an up-to-date law school transcript, a writing sample, and two letters of recommendation with my application. Thank you for your consideration.

Respectfully,

Joseph Mollica

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EDUCATION

American University Washington College of Law, Washington D.C. May 2024
Juris Doctor Candidate
GPA: 3.36

Rollins College, Winter Park, FL May 2020
Bachelor of Arts in Economics | Minor: Political Science
Honors: President's List | Dean's List
Activities: Pi Sigma Alpha | Rollins Honor Law Society
Study Abroad: American University of Rome, Rome, Italy (Fall 2018)

EXPERIENCE

American University International Law Review
Articles Editor, Volume 39 March 2023 – Present
- Completing above-the-line and below-the-line reviews of articles selected for publication by the journal.

Junior Staffer, Volume 38 April 2022 – March 2023
- Completing production assignments, source collection, and Bluebook citation editing.
- Wrote a Comment on conspiracy-based personal jurisdiction and its implications in international legal disputes.

Office of State's Attorney, Prince George's County, Maryland July 2022 – August 2022
Legal Intern
- Conducted trial preparation, mainly by listening to jail calls.
- Conducted legal research and wrote a memorandum concerning the constitutionality of the county's Back on Track Program.

Reyer Law Group, P.A., Boca Raton, FL October 2020 – May 2021
Real Estate Legal Assistant
- Drafted and reviewed legal documents, such as Estoppel letters and client information letters.
- Created and maintained closing files in DoubleTime.
- Communicated with clients to obtain confidential information required for closings.
- Coordinated with real estate agents and attorneys to acquire commission percentages, closing dates, and contact information.
- Filed post-closing documents for recording in the Palm Beach County records.

Royal Life Centers, Palm Springs, FL May 2019 – June 2019
Administrative Assistant to the Executive Office Manager
- Completed financial tasks for the Executive Office Manager, mainly monitoring credit charges.

VOLUNTEER WORK

The Phoenix at Delray October 2015 – April 2016
- Engaged nursing home residents in artistic activities such as painting and drawing to stimulate cognitive functions and enhance social well-being.

SKILLS AND INTERESTS

Languages: Spanish (fluent), Italian (conversational)
Interests: Cooking and reading fiction novels as well as autobiographies

MOLLICA JOSEPH L 5266568 10/03

01/27/23 1 OF 1

FALL 2021

LAW-501	CIVIL PROCEDURE	04.00	B+	13.20
LAW-504	CONTRACTS	04.00	B	12.00
LAW-516	LEGAL RESEARCH & WRITING I	02.00	A	08.00
LAW-522	TORTS	04.00	B+	13.20

LAW SEM SUM: 14.00HRS ATT 14.00HRS ERND 46.40QP 3.31GPA

SPRING 2022

LAW-503	CONSTITUTIONAL LAW	04.00	B+	13.20
LAW-507	CRIMINAL LAW	03.00	B+	09.90
LAW-517	LEGAL RESEARCH & WRITING II	02.00	B+	06.60
LAW-518	PROPERTY	04.00	B	12.00
LAW-550	LEGAL ETHICS	02.00	A-	07.40

LAW SEM SUM: 15.00HRS ATT 15.00HRS ERND 49.10QP 3.27GPA

FALL 2022

LAW-508	CRIMINAL PROCEDURE I	03.00	B+	09.90
LAW-611	BUSINESS ASSOCIATIONS	04.00	A-	14.80
LAW-623	COPYRIGHT	03.00	B+	09.90
LAW-765F	INTL LAW REVIEW I	02.00	--	--.--
LAW-795AM	ADVANCED LEGAL METHODS	02.00	A	08.00

LAW SEM SUM: 14.00HRS ATT 12.00HRS ERND 42.60QP 3.55GPA

SPRING 2023

LAW-601	ADMINISTRATIVE LAW	03.00	--	--.--
LAW-628	CRIMINAL PROCEDURE II	03.00	--	--.--
LAW-633	EVIDENCE	04.00	--	--.--
LAW-648	FOOD AND DRUG LAW	03.00	--	--.--
LAW-821C	LEGISLATIVE NEGOTIATION	03.00	--	--.--

LAW CUM SUM: 43.00HRS ATT 41.00HRS ERND 138.10QP 3.36GPA

END OF TRANSCRIPT

AMERICAN UNIVERSITY
WASHINGTON, DC

LEGAL RHETORIC PROGRAM

June 8, 2023

To Whom It May Concern:

Joseph Mollica has asked me to write a letter of recommendation on his behalf and I am delighted to do so. In all of my interactions with Joe I have found him to be intelligent, enthusiastic, considerate, and hardworking. Overall, he is an accomplished and passionate student whose application I hope you will strongly consider.

I first met Joe in the fall of 2021 as a student in my year-long Legal Rhetoric course. Over the first few weeks of the course, Joe set himself apart from his peers through thoughtful questions, diligent attendance at office hours, and exponential improvement of his written drafts. By the end of the course, it was clear that his organization and legal reasoning placed him in the top tier of our class.

Often, I see first-year students entering law school struggle to adjust their studying and writing practices to a law school environment. Although I initially noticed this with Joe, it was also very clear that he was putting in the time, energy, and effort to improve. Indeed, he progressed quickly, incorporated suggestions, and accepted constructive feedback with good humor. In particular, his meticulous Bluebook citations demonstrated a keen attention to detail, which I understand has served him well as he has accepted a position on his Law Review's editorial board.

Joe's in-class presence and participation during office hours have also demonstrated that he is an effective communicator with a unique ability to address nuanced concepts in a thoughtful and measured manner. He is exceedingly polite and professional towards all his classmates but was also unafraid to request clarification or challenge the premise of an assumption. Through spring semester group work, Joe also demonstrated that he was able to work effectively in partnered assignments even when his partner had a challenging personality and less intense work ethic.

WASHINGTON COLLEGE OF LAW
4300 NEBRASKA AVENUE, NW SUITE Y364 WASHINGTON, DC 20016 202-274-4074 FAX: 202-274-4307

In addition to working with Joe in a classroom setting, I also served as the faculty advisor for his comment on conspiracy-based personal jurisdiction in relation to international legal disputes. This exemplified Joe's strong research and writing skills while demonstrating that even though advice from a faculty advisor could provide assistance, Joe is independently capable of complex research projects. He always met our deadlines and raised thought-provoking issues during our discussions of his work.

Joe's research skills, work ethic, and intelligence are matched by an engaging and good-humored personality. While a student in my course I had the pleasure of observing Joe's progress which he has clearly continued during his second year of law school. Accordingly, I'm certain that Joe's future in the legal profession is bright.

I hope that you will strongly consider Joe as a law clerk in your chambers. He will be a positive reflection of any Judge or Magistrate that may offer him a position. Should you have any questions or require additional information please do not hesitate to contact me directly. I welcome the opportunity to expand on the ways in which Joseph Mollica is an exceptional student.

Best,

Belgin S. Palaz
Adjunct Professor, Legal Rhetoric Program
American University, Washington College of Law
4300 Nebraska Avenue, NW, Suite Y364
BelginPalaz@american.edu
(713)-409-0814 (cell)

June 5, 2023

To Whom It May Concern

Re: Applicant - Joseph Mollica

To Whom It May Concern:

My name is James Reyer, an attorney licensed in the States of New York and Florida, with offices located in Boca Raton, Florida. I have been engaged in the practice of law for 42 years. It is with great pleasure that I offer my personal recommendation for an applicant for judicial clerkship, Mr. Joseph Mollica.

I have personally known Mr. Mollica since he was ten years old. In his younger days he professed a great interest in the law and our political system always stating that when he grew up he wanted to be an attorney. Watching Mr. Mollica growing up over the years, I was always impressed with his moral character, his personal integrity and his deep sense of personal honor.

I was very pleased to learn that as an adult Mr. Mollica had chosen the field of law as his vocation and had enrolled in law school. In a field that has come under harsh scrutiny for a perceived lack of ethics, I feel strongly that Mr. Mollica would be both a credit to the profession of law and a fierce advocate of all that is right in the legal profession.

In a day and age where many young men look at a license to practice law as an easy ticket to fame and fortune, Mr. Mollica has demonstrated at a young age that the law and its practitioners can channel their energy in positive directions for the betterment of society. Mr. Mollica was employed by our office as an intern. During his time here, he was engaged in tasks related to all aspects of the law in which our office practices. These were the type of tasks that were beyond the capabilities of newly admitted or recently admitted attorneys. This work experience alone gives Mr. Mollica a great edge in both law school and the competitive legal field. Young attorneys first are trained in the law and the legal thought process and only after obtaining proficiency in these skills, the education of learning to be a lawyer truly begins. Mr. Mollica through his work experience and personal experience is well on the road to mastering the necessary skills of a lawyer. Many of us leave law school with a diploma without a clue as to the real world and real challenges which face practitioners in the legal field. Mr. Mollica through his work experience has already surpassed a typical student who has already graduated law school.

In addition to Mr. Mollica's extensive work experience, Mr. Mollica has also expended a great amount of time in his pre-law school legal studies, both through courses taken in college and in personal readings pertaining to the history and philosophy of the law. His varied scholastic background is quite apparent by a review of his resume and needs no further discussion here.

Finally, I would also like to take this opportunity to point out Mr. Mollica's non-scholastic achievements. Mr. Mollica understands that as citizens we all have a duty in society to work towards the betterment of our fellow citizens. Too often legal practitioners have strayed from our core value which is to serve the law for the improvement and enhancement of society and the lives of those around us. Mr. Mollica has demonstrated a commitment to society through his extensive community service. As I stated previously, some in the legal field believe that a law license is a ticket to fame and fortune, but others still believe that it is a higher calling for the enhancement of the quality of lives of those around us. Although Mr. Mollica has not yet graduated law school, he has certainly demonstrated those attributes which show that he believes in the traditional value and place of law in our society.

In conclusion, I would to stress that Mr. Mollica is a hard working, diligent and thoughtful young man who would be an outstanding addition to the judicial clerkship program. It is my hope that you recognize the potential contributions this young man will be able to add to both the judicial clerkship program and the legal field.

If your office would like any further information in this matter, I would be glad to provide same.

Very truly yours,

James N. Reyer

JR/nls

JOSEPH MOLLICA
4850 Connecticut Avenue NW Apt. 813, Washington D.C. 20008
(561) 512-5767 | mollicajosephl@gmail.com

Writing Sample

The following is an excerpt of my Comment written for the American University International Law Review, analyzing the international implications of U.S. conspiracy-based personal jurisdiction. While I have received feedback from my faculty advisor and comment editor, the arguments contained herein are my own. I have only included a portion of the analysis section.

ABSTRACT

In December 2021, the U.S. Court of Appeals for the Second Circuit recognized conspiracy-based personal jurisdiction in Schwab v. Lloyds and exercised that jurisdiction over Credit Suisse Group AG, a Swiss defendant corporation in the conspiracy to manipulate the LIBOR. Credit Suisse Group AG petitioned the United States Supreme Court for review. The question in Credit Suisse Group AG's petition to the Supreme Court was whether personal jurisdiction over a defendant based on an alleged co-conspirator's foreseeable acts in the forum is valid. The U.N. Declaration on Friendly Relations proscribes intervention by one member state into another member state's domestic jurisdiction.

This Comment argues that the U.S. Second Circuit's exercise of conspiracy-based personal jurisdiction violates the U.N. Declaration on Friendly Relations by (1) coercively intervening on a Swiss sovereign right and (2) invading the Swiss domain of domestic jurisdiction based on both the current state of international law and principle. This Comment recommends that the United Nations urge the United States to dismiss Credit Suisse Group AG from the Schwab v. Lloyds action while executing a general rule limiting this sweeping jurisdictional framework. The United Nations should also broadly redefine domestic jurisdiction to conform with U.S. due process for application in the U.N. Declaration on Friendly Relations.

III. Analysis

B. The U.S. Second Circuit's exercise of conspiracy-based jurisdiction over Credit Suisse violates well-established U.S. due process principles in addition to the U.N. Declaration on Friendly Relations.

U.S. due process in exercises of personal jurisdiction over any defendant, including nonresident or foreign defendants in U.S. courts, requires first that the foreign defendant's relationship with the forum state arise out of the defendant's contacts with that state.[1] Second, U.S. due process also requires that the defendant have the requisite minimum contacts, not a co-conspirator who acted foreseeably, with the forum state such that the traditional notions of fair play and substantial justice are not offended.[2] Credit Suisse individually, like the other foreign defendants in Schwab v. Lloyds,[3] does not have the requisite minimum contacts with the U.S. forum to satisfy the constitutional due process requirements set forth in International Shoe Co. v. Washington[4] and Walden v. Fiore.[5]

Credit Suisse is a Swiss corporation organized and formed under the laws of Switzerland.[6] Credit Suisse has no parent companies.[7] Credit Suisse is neither incorporated

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[1] See Int'l. Shoe Co. v. Washington, 326 U.S. 310, 316–19 (1945) (emphasizing that a defendant's minimum contacts with the forum are required by U.S. due process and the U.S. Constitution); see also Walden v. Fiore, 571 U.S. 277, 283–84 (2014).

[2] See Int'l. Shoe Co., 326 U.S. at 316–19; see also Walden, 571 U.S. at 283–84.

[3] 22 F.4th 103, 109–25 (2d Cir. 2021).

[4] See 326 U.S. at 316–19.

[5] See 571 U.S. at 283–84.

[6] See Petition for Writ of Certiorari at v, Lloyds Banking Grp. PLC v. Schwab Short-Term Bond Mkt. Fund, 142 S. Ct. 2852 (2022) (No. 21-1237).

[7] See id.

nor headquartered in the United States.[8] However, Credit Suisse does have one hub in New York and another in Raleigh, North Carolina, neither of which are used by the Second Circuit in the Schwab[9] ruling as a basis for their exercise of specific personal jurisdiction over Credit Suisse or any associated jurisdictional analysis.[10] The sole basis of the Second Circuit's exercise of conspiracy-based personal jurisdiction over Credit Suisse is the foreseeable actions of alleged third-party co-conspirator banks, such as J.P. Morgan Chase Bank, Barclays Bank PLC, and UBS AG.[11] Traditionally, since Credit Suisse did not execute any direct action in the U.S. and it does not have the requisite contacts with the forum itself, although it may with third parties in the forum, the Second Circuit's exercise of conspiracy-based personal jurisdiction over it would likely violate U.S. constitutional due process.[12] In particular, the Second Circuit violated the minimum contacts with the forum requirement of due process by imputing the foreseeable acts of alleged co-conspirators to Credit Suisse, in

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[8] See Credit Suisse, About Us, https://www.credit-suisse.com/us/en.html (last visited Oct. 25, 2022); see also Credit Suisse Group AG, **BL**, https://www.bloomberg.com/profile/company/CSGN:SW?leadSource=uverify%20wall (last visited Oct. 25, 2022).

[9] See Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC, 22 F.4th 103, 109–25 (2d Cir. 2021).

[10] Credit Suisse, Working in the United States, https://www.credit-suisse.com/careers/en/locations/working-in-united-states.html (last visited September 30, 2022).

[11] See Schwab Short-Term Bond Mkt. Fund, 22 F.4th at 123–25.

[12] See Int'l. Shoe Co. v. Washington, 326 U.S. 310, 316–19 (1945); see also Walden v. Fiore, 571 U.S. 277, 283–84 (2014).

lieu of defendant-specific minimum contacts analysis, in order to justify its exercise of specific personal jurisdiction.[13]

C. Proscribing intervention in matters of a state's domestic jurisdiction, like the U.S. Second Circuit's exercise of conspiracy-based personal jurisdiction over Credit Suisse, promotes the U.N. Declaration on Friendly Relations' goal of peaceful co-existence among states.

One main objective of the Friendly Relations Declaration's proscription on intervention in matters of a state's domestic jurisdiction is to strengthen world peace, particularly on the twenty-fifth anniversary of the U.N.[14] The Friendly Relations Declaration states that strict observance of the prohibition on intervention in another state's affairs ensures this peaceful coexistence and that such intervention, if permitted, would jeopardize international peace and security.[15] Additionally, the Special Committee of the General Assembly emphasizes that peacekeeping operations should respect the U.N. Charter, particularly the provisions barring intervention in matters of a state's domestic jurisdiction, which are uniformly applied to all U.N. member states through the Friendly Relations Declaration.[16]

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[13] See Int'l. Shoe Co., 326 U.S. at 316–19; see also Walden, 571 U.S. at 283–84; see also Schwab Short-Term Bond Mkt. Fund, 22 F.4th at 123–25.

[14] See G.A. Res. 26/25, Declaration on Friendly Relations, at 121; see also U.N. Charter art. 1, ¶¶ 1–2 (stating that two purposes of the U.N. are to (1) maintain international peace and security and (2) develop friendly relations among nations).

[15] See G.A. Res. 26/25, supra note 14, at 122 (Oct. 24, 1970).

[16] See Kawser Ahmed, The Domestic Jurisdiction Clause U.N. Charter: Hist. View, 10 **Sing. Y.B. Int'l. L.** 175, 194 (2006) (highlighting the importance of non-intervention in the domain of a state's domestic jurisdiction for the peacekeeping and peaceful co-existence goals of the

Credit Suisse conducted no direct action and has no contacts with a U.S. forum, yet is forced to remain in the Schwab lawsuit based on the foreseeable acts of alleged co-conspirators.[17] Allowing the Second Circuit's exercise of jurisdiction over Credit Suisse to proceed without any challenge from the international community, while in clear violation of the Friendly Relations Declaration's bar on intervention in a state's domestic jurisdiction and likely the U.S. due process requirement of minimum contacts, is problematic. Particularly because this exercise of jurisdiction potentially undermines peaceful relations between the United States and Switzerland.[18]

D. The U.S. Second Circuit's exercise of conspiracy-based personal jurisdiction over Credit Suisse promotes forum shopping and the manipulation of jurisdictional rules on an international level.

The judicially unchallenged ruling by the Second Circuit exercising conspiracy-based personal jurisdiction over Credit Suisse has the potential to increase forum shopping on an international level. Indeed, the exercise of conspiracy-based personal jurisdiction over foreign defendants based on the foreseeable acts of co-conspirators and without the requisite minimum contacts with the forum required by the U.S. Supreme Court in International Shoe[19] and Walden[20] encourages the jurisdictional gamesmanship associated with forum shopping

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Friendly Relations Declaration and the U.N. Charter more broadly); see also G.A. Res. 26/25, supra note **Error! Bookmark not defined.**, at 123; see also U.N. Charter art. 2, ¶ 7.

[17] See Schwab Short-Term Bond Mkt. Fund, 22 F.4th at 123–25.

[18] See id. at 111; see also G.A. Res. 26/25, supra note 14, at 123; see also Int'l. Shoe Co., 326 U.S. at 316–19; see also Walden, 571 U.S. at 283–84.

[19] 326 U.S. at 316–19.

[20] 571 U.S. at 283–84.

internationally.[21] This jurisdictional gamesmanship, particularly in U.S. forums, is now more likely given the broader ability of the Second Circuit and other U.S. courts to exercise conspiracy-based personal jurisdiction over foreign defendants based on the foreseeable actions of alleged third-party co-conspirators.[22] The motivations for plaintiffs to shop around for a U.S. forum were already great before the Second Circuit's ruling in Schwab[23] and the United States Supreme Court's denial of the Schwab[24] defendants' Petition for a Writ of Certiorari given the existing procedural advantages provided in the U.S. court system; now these motivations will likely increase.[25]

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[21] See Harald Koch, Int'l F. Shopping & Transnat'l Lawsuits, 2006 (31) **The Geneva Papers** 293, 294, 297 (stating that a forum shopper must ensure that the defendant has minimum contacts to the forum state to invoke any court's jurisdiction); see also Andrea Tkacikova & Patrick L. Krauskopf, Competition L. Violations & Priv. Enf't: F. Shopping Strategies, 2011 **Glob. Competition Litig. Rev.** 26, 33 (explaining that a foreign defendant must (1) have both minimum contacts with the forum state and (2) have contributed to the occurrence of injuries in the forum; a court generally does not have jurisdiction over a defendant satisfying only element (1) or (2)).

[22] See Schwab Short-Term Bond Mkt. Fund, 22 F.4th at 123; see also Lloyds Banking Grp. PLC v. Schwab Short-Term Bond Mkt. Fund, 142 S. Ct. 2852 (2022).

[23] 22 F.4th at 123.

[24] Id.

[25] See Koch, supra note 21, at 298 (listing the following procedural advantages U.S. courts provide to plaintiffs: (1) the preparation of each party's own expert witnesses, (2) pre-trial discovery mechanisms, (3) procedural speed and efficiency, (4) each party being responsible for only the legal fees that they have incurred throughout the litigation, (5) trial by jury, (6)

The possibility of extensive pre-trial discovery and a jury trial, which are distinct features of the U.S. judicial system, are often the main drivers behind international forum shopping to a U.S. court.[26] For example, the wide-ranging pre-trial discovery stage, which provides the plaintiff with substantial access to the defendant's records, and the jury trial process, which allows the staging of evidence before a jury, both assist the plaintiff in making an effective case through tools unavailable in other forums around the world.[27] If all that is necessary to confer a U.S. court jurisdiction over a foreign defendant is an alleged co-conspirator's foreseeable act(s) in the forum in furtherance of the alleged conspiracy, as is the case under conspiracy-based personal jurisdiction in the Second Circuit, then the U.S. court system is ripe for forum shopping by plaintiffs suing foreign defendants to get access to these procedural advantages.[28]

Alleging an international conspiracy would be grossly abused as a means for the plaintiff to access the plaintiff-friendly procedural advantages that U.S. courts provide. The Second Circuit's recognition of conspiracy-based personal jurisdiction makes it far easier to force multiple defendant co-conspirators into a lawsuit if the plaintiff can assert the requisite

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class action lawsuits, and (7) actual enforcement of the judgment where the defendant(s) have assets); see also Lloyds Banking Grp. PLC, 142 S. Ct. at 2852.

[26] See Koch, supra note 21, at 295.

[27] See id. (quoting Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981)).

[28] See Schwab Short-Term Bond Mkt. Fund, 22 F.4th at 123–25; see also Koch, supra note 21, at 295, 298; see also Tkacikova & Krauskopf, supra note 21, at 31 (emphasizing that speedy legal protections, pre-trial discovery methods, and the jury trial influence a plaintiff's selection of a forum).

minimum contacts and foreseeable acts for just a single co-conspirator.[29] Conspiracy-based personal jurisdiction gives the plaintiff multiple fora from which they can choose, leaving alleged co-conspirator foreign defendants actually lacking the requisite minimum contacts with no choice as to forum.[30] This consequence of conspiracy-based personal jurisdiction leaves co-conspirator defendants, like Credit Suisse, with no remedy for the broad conspiratorial claims of a forum shopping plaintiff and only acts as an additional incentive for forum shopping right along with pre-trial discovery mechanisms and jury trials.[31]

Additionally, media coverage of the harm at the center of any litigation can encourage a plaintiff to engage in forum shopping.[32] The LIBOR rate-fixing scandal, in which Credit Suisse is an alleged co-conspirator in the Schwab[33] antitrust litigation, garnered significant public outrage at the time.[34] The substantial media coverage could influence plaintiffs to sue foreign defendants like Credit Suisse given the public backlash surrounding the scandal and the likely pressure for both the U.S. government and U.S. courts to address the alleged

[29] See Schwab Short-Term Bond Mkt. Fund, 22 F.4th at 123–25.

[30] See Koch, supra note 21, at 299.

[31] See id. at 295.

[32] See Tkacikova & Krauskopf, supra note 21, at 32.

[33] 22 F.4th at 123.

[34] See Jason Fernando, LIBOR Scandal, **Investopedia** (June 12, 2022), https://www.investopedia.com/terms/l/libor-scandal.asp; see also Schwab Short-Term Bond Mkt. Fund, 22 F.4th at 122–23.

antitrust violations which may have financially harmed U.S. consumers of any manipulated LIBOR-based financial products.[35]

[35] See id.; see also Tkacikova & Krauskopf, supra note 21, at 32; see also Schwab Short-Term Bond Mkt. Fund, 22 F.4th at 111–25.

Applicant Details

First Name	**Christopher**
Last Name	**Moore**
Citizenship Status	**U. S. Citizen**
Email Address	**cam9163@nyu.edu**
Address	**Address** Street **110 W 3rd Street, DA-411B** City **New York** State/Territory **New York** Zip **10012**
Contact Phone Number	**3188344162**

Applicant Education

BA/BS From	**Tulane University**
Date of BA/BS	**May 2021**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 22, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Friedman, Barry
barry.friedman@nyu.edu
212-998-6293
Simson, David
david.simson@nyls.edu
310-966-0685
Harper, Brandon
Brandon.Harper2@usdoj.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Chris Moore
110 W. 3rd St.
New York, NY 10012
318-834-4162
christopher.moore@law.nyu.edu

June 12, 2023

The Honorable Juan Sánchez
United States District Court
Eastern District of Pennsylvania
10614 U.S. Courthouse, Courtroom 14-B
601 Market Street
Philadelphia, PA 19106

Dear Chief Judge Sanchez,

I am a second-year student at NYU School of Law and Executive Editor of the NYU Law Review. I am writing to apply for a 2024-2025 term, or any subsequent term, clerkship in your chambers.

As you will see from my enclosed resume, I spent last summer interning at the United States Attorney's Office for the Southern District of New York. Moreover, as a Research Assistant to Professor Barry Friedman, I conducted extensive research about state analogues to the federal Third-Party Search doctrine. I believe these experiences, along with my role on Law Review, have prepared me for a clerkship in your chambers.

Enclosed please find my resume, law school and undergraduate transcripts, and writing sample. My writing sample is a paper I wrote for my Corporate Crime and Financial Misleading Seminar examining the validity of the right to control theory of fraud. Also enclosed are letters of recommendation from Professors Barry Friedman and David Simson. Brandon Harper, Assistant United States Attorney for the Southern District of New York, has also agreed to serve as a reference.

If you have any questions, please feel free to contact me at the above address and telephone number. Thank you for considering my application.

Respectfully,
/s/
Chris Moore

CHRISTOPHER MOORE

110 West 3rd Street, New York, NY 10012 | 318-834-4162 | christopher.moore@law.nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Candidate for J.D., May 2024
Honors: *Law Review*, Executive Editor
Dean's Award Scholarship- *partial tuition scholarship based in part upon academic merit*
Sudler Family Fellowship
Activities: Black Allied Law Students Association, Member
Prosecution Legal Society, Member
Government Civil Litigation Clinic, SDNY (Fall 2022)
Policing Project Legal Fellow (Fall 2023)

TULANE UNIVERSITY, SCHOOL OF LIBERAL ARTS, New Orleans, LA
Bachelor of Arts in History & Political Science, May 2021
Honors: Dean's List (Spring 2018-Spring 2020)
Activities: Alpha Phi Alpha Fraternity Inc., President
Mock Trial Team, Competitor
TIDES (Tulane Interdisciplinary Experience Seminar), Peer Mentor
TEDxTulane, Curator

EXPERIENCE

DEBEVOISE & PLIMPTON, New York, NY
***Summer Associate*,** Summer 2023

U.S ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK, New York, NY
Legal Intern*, *Criminal Division, Summer 2022
Performed legal research and drafted trial court motions, briefs, and legal memoranda regarding a variety of criminal proceedings. Closely collaborated in trial preparation; investigated evidence, evaluated complex legal issues, and interviewed and corresponded with witnesses.

PROFESSOR BARRY FRIEDMAN, NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Research Assistant, Summer 2022
Conducted extensive legal research and writing in the area of Criminal Procedure, including an analysis of the privacy policy implications of the Supreme Court's ruling in *Carpenter v. United States*.

GREATER NEW ORLEANS INC., New Orleans, LA
Policy and External Affairs Intern, August 2018 - May 2019
Researched and developed talking points for policies related to economic development including early childhood education, higher education, and pension reform. Examined the impact of international tariffs on local industries.

OFFICE OF COUNCIL MEMBER JASON WILLIAMS, New Orleans, LA
Legislative Intern, June - August 2018
Collaborated in preparing statements for the Councilman to present at City Council meetings. Met with constituents concerning a variety of issues. Proposed policies focused on increasing youth involvement in government.

OFFICE OF THE MAYOR OF NEW ORLEANS, New Orleans, LA
Executive Office Assistant Intern, September 2017 - May 2018
Researched previous press stories for various media pitches. Assisted in preparation for mayoral interviews.

ADDITIONAL INFORMATION

Enjoy cooking, swimming, and reading in my free time. Worked as a camp counselor for two summers while in college. Volunteered with an organization that provides mentorship to fatherless youth in college.

Name: **Christopher A Moore**
Print Date: **05/31/2023**
Student ID: **N16685405**
Institution ID: **002785**
Page: **1 of 1**

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: David Simson			
Torts	LAW-LW 11275	4.0	B
Instructor: Mark A Geistfeld			
Procedure	LAW-LW 11650	5.0	B+
Instructor: Helen Hershkoff			
Contracts	LAW-LW 11672	4.0	B
Instructor: Richard Rexford Wayne Brooks			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Christopher Jon Sprigman			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: David Simson			
Legislation and the Regulatory State	LAW-LW 10925	4.0	B
Instructor: Adam B Cox			
Criminal Law	LAW-LW 11147	4.0	A-
Instructor: Ekow Nyansa Yankah			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Christopher Jon Sprigman			
Criminal Procedure: Police Practices	LAW-LW 12697	4.0	B+
Instructor: Barry E Friedman			
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
Juris Doctor
Major: Law

Complex Federal Investigations Seminar	LAW-LW 11517	2.0	B-
Instructor: Katherine R Goldstein Parvin Daphne Moyne			
Evidence	LAW-LW 11607	4.0	B+
Instructor: Erin Murphy			
Government Civil Litigation Externship-Southern District	LAW-LW 11701	3.0	B
Instructor: Seungkun Kim Monica Pilar Folch			
Government Civil Litigation Externship - Southern District Seminar	LAW-LW 11895	2.0	B+
Instructor: Seungkun Kim Monica Pilar Folch			
Corporate Crime and Financial Misdealing: Legal and Policy Analysis Seminar	LAW-LW 12243	2.0	A-
Instructor: Jennifer Hall Arlen Joseph P Facciponti			
Research Assistant	LAW-LW 12589	2.0	CR
Summer 2022 Research Assistant			
Instructor: Barry E Friedman			

	AHRS	EHRS
Current	15.0	15.0
Cumulative	45.0	45.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Constitutional Law	LAW-LW 11702	4.0	B
Instructor: Peter Milo Shane			
Property	LAW-LW 11783	4.0	B
Instructor: David Jerome Reiss			
Introduction to Accounting and Finance	LAW-LW 12337	3.0	CR
Instructor: April Klein			
The Elements of Criminal Justice Seminar	LAW-LW 12632	2.0	A-
Instructor: Preet Bharara			

	AHRS	EHRS
Current	13.0	13.0
Cumulative	58.0	58.0

Staff Editor - Law Review 2022-2023

End of School of Law Record

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Dear Judge,

I am writing on behalf of Chris Moore, who is applying to clerk in your chambers beginning any time after he graduates in the Spring of 2024. I have worked with Chris in a wide variety of capacities, and I'm a big fan. I strongly encourage you to consider him.

I first got to know Chris when he took my 1L Criminal Procedure elective. This was still during the pandemic, and no easy time, but Chris was a standout student. He participated frequently, he was always on top of the material, and he was equally consistently a spark of humor and grace. He did well on the exam, and I affirmatively was grateful to have him in class. He also came to office hours, and showed real interest in the material.

Based on my experience with Chris, I asked him to work as my RA, as he has done for some time. He worked on a variety of projects, from the development of the right to carry arms and its relationship to policing, to projects about whether and how law enforcement should be able to collect and store data on individuals. I saw his work from initial research and memo writing to footnoting. Chris is a hard worker who takes the job seriously. His work was always on time and helpful to the projects. He had real insight at times.

I yet again asked Chris to work with me, interviewing for a position as a Fellow at the Policing Project that I founded, which works to bring democratic accountability to policing. My team recently enthusiastically chose him as a Fellow, and I am happy that our professional relationship will continue.

Chris's long term interests are to be a prosecutor, and to work in a large law firm before that. From the time he arrived here, Chris has interests in being a prosecutor. What is admirable is that he has pursued learning and experiences on all sides of the criminal legal system. That is classic Chris—to see things from all sides, and want to understand them that way.

Chris has had an incredible career here. He is an Executive Editor for the Law Review, treasurer for the Prosecution Legal Society, and been involved in BALSA. As is apparent, he is one of those people that dives into things with enthusiasm, and given my experience with him I'm sure he is received enthusiastically wherever he goes.

Chris is going to be a good law clerk. He is a hard worker and deeply engaged in all he does. I'm particularly impressed with how far along his writing has come from his time as an RA. I just read a paper he wrote on Right to Control, and it was extremely clear. His efforts have paid off. He's smart and savvy both. He has spent time working with government, and that pragmatic side shows in all he does.

It doesn't take long knowing Chris to realize he is a special and stellar person, engaging, kind, funny, caring, and deeply responsible. I like him a great deal.

I am pleased to recommend Chris to you, and urge you to interview him. Please do not hesitate to contact me if you have any questions.

Best regards,

Barry Friedman

NEW YORK LAW SCHOOL

David Simson
Associate Professor of Law

185 West Broadway
New York, NY 10013
Cell: (310) 966-0685
Email: david.simson@nyls.edu

June 12, 2023

RE: Christopher Moore, NYU Law '24

Your Honor:

I am writing to strongly support Christopher Moore in his candidacy for a judicial clerkship. I recently transitioned to an Associate Professor position at New York Law School, but until May of 2022 I was an Acting Assistant Professor of Lawyering at NYU Law School. There, Chris was a student in my Lawyering class of 32 students during the 2021-22 school year. The work-intensive nature of the Lawyering course and the individualized engagement with students that it involves allowed me to get to know Chris and his work better than other law school classes. In my course, Chris demonstrated great professionalism and resilience, an impressive trajectory in his lawyering skills development, and a kind, empathetic, and generous personality that made him a valued contributor to groups small and large. I believe that all of these attributes will make him a valued and effective member of chambers and thus I strongly support his clerkship application.

As background for my interactions with Chris, the Lawyering Program is a key part of the first-year curriculum at NYU Law School. It asks students to engage in a wide variety of tasks that include, but go significantly beyond, the traditional legal research and writing assignments that most law schools emphasize. In addition to completing such research and writing assignments, students learn how to navigate class discussions and in-class simulations of various types, give peer feedback in small critique conferences, interview and counsel mock clients, participate in mock mediations and negotiations, practice their professional emailing skills, and prepare for and present an oral argument with external judges. The goal in exposing students to all of these challenges is to introduce them to the complex, interactive, context-sensitive, and interpretive work required to excel in legal practice.

Some of these tasks came more naturally to Chris while others required an adjustment to new and at times unintuitive ways of doing things. But what made Chris stand out in my class is that he tackled all of these tasks with a combination of attributes that I believe will make him an excellent clerk: A very strong work ethic, dedication to continuously improve, and resilience in the face of challenges; as well as an uncanny ability to combine that work ethic with a kind, humble, and warm personality dedicated to contributing deeply to the success of the many teams of which he was a part.

I believe that the attribute that will perhaps most allow Chris to do excellent work and make a positive impact both as a clerk and throughout his career is his professionalism and resilience. In my class, Chris most tangibly (though certainly not exclusively) demonstrated this professionalism and resilience in the way in which he handled adjusting to the unique

conventions and demands of legal writing. In my years of teaching legal writing, I have found that the idiosyncratic conventions of legal writing—especially when combined with the additional idiosyncrasies of the demands of each individual legal writing professor—can be very challenging for some students to adjust to, especially students who were trained and highly skilled in other writing approaches prior to law school. Chris experienced these challenges in my course, but what I believe will make him a great clerk is not that he did, but how he handled them. Chris once shared with me that in college he had done work as a writing tutor, and in his initial assignments I could tell that he had a strong skill set for types of writing such as what I would expect in policy analysis and the like. What did not always seem to come naturally for Chris was taking this kind of writing and adjusting it to the very specific and unforgiving structure of legal argument that I taught in my class. Thus, in early assignments, Chris worked through some struggles with things such as ordering different kinds of information within the structure of a legal argument, how specifically to integrate and marshal legal authority in different parts of a legal argument, and the like.

Chris was, of course, not unique in experiencing such struggles, but he did stand out in the way in which he responded to them. Rather than, as many other students did, being somewhat combative and resisting the extensive and detailed feedback that I provided to each student, Chris embraced the challenge with a positive mindset. For the first major writing assignment, for example, Chris was the only student who not only reached out to speak with me in person multiple times to take advantage of the opportunity to clarify his understanding and approach, but he also completed extra iterations of the assignment so that he could practice what to him was still a somewhat unintuitive way of making arguments. Because my class was not graded, each student had the option of reaching out to me for feedback as often as they thought helpful, but precisely because my class was not graded, almost no students actually did so. Chris did, recognizing how important it would be for his future development as a lawyer, and he did so with skill and determination. Rather than haggling with me (as some of his colleagues did) over why he wasn't right in the way he wrote after all, Chris asked for feedback, exposed his work to further critique, improved his craft, and repeated the process again and again. This is what I consider a hallmark of a successful lawyer—a dedication to honing one's craft throughout one's career—and Chris showed to me that for him this is not just an unavoidable but annoying demand of the job, but the way he approaches his life. This will serve him very well as a clerk, as well as in his career in general, in my opinion. That he did all of this while navigating the innumerable stresses and anxieties of the first year of law school makes this even more remarkable.

As a result, the trajectory of Chris's skills development over the course of the year in my class was truly impressive. Chris's written work product went from a source of struggle to being in the stronger half of the class by the time of his final writing assignment—a jump that I do not remember any other of my students making. I am, moreover, confident that Chris has continued this trajectory since. Thus, I believe that not only will Chris be able to deliver high-quality work product from Day 1 of his clerkship, but more importantly still, that he will actively seek out the innumerable learning opportunities that a judicial clerkship provides and that he will take skilled advantage of them to continue to improve his craft and contributions

every single day. To me, this is the kind of person that I would want to work with and I hope you strongly consider Chris's application in this light.

In addition to having the kind of professionalism and resilience described above, Chris is also kind, empathetic, and generous, which made him a valued contributor to groups small and large in my course. I distinctly remember how Chris by random selection ended up being teamed up with two of the more challenging students in my course in what was a weeks-long simulation that involved various assignments ranging from interviewing to memo writing to client counseling. One of Chris's teammates was smart but struggled connecting interpersonally, and the other had decided to deprioritize my course yet was both in denial and combative about this fact. Chris worked hard to nevertheless ensure that his team worked as successfully as possible, and never deflected responsibility to his teammates. Thus, in the group's simulated client interview, it was clear that one of Chris's teammates had a hard time empathizing with the client in what was an emotionally charged employment discrimination case, and the other was not very well prepared. Chris did what he could to make the team do its best nevertheless. He took on the opening part of the interview, and my notes from watching the interview repeatedly stress how Chris did a great job empathizing with the client, allowing the client to tell their story, and soliciting relevant information effectively. Chris also jumped in to fill gaps even in parts of the interview that were not technically "assigned" to him.

In the group feedback session, Chris still never called out his colleagues but instead focused on what the team could do better moving forward. This contrasted strongly with one of his colleagues, who instead asked me to work with other students in the future because he did not feel like he got along with the third teammate's personality. Once again, Chris was a true professional who was able to work across differences to ensure greater team success despite this involving both a stressful experience and a lot of work for him. In my view, this skill, too, will serve Chris well both as a clerk and as a lawyer—environments in which strong and (at times) difficult personalities abound and in which team success often depends on people with the skillset and professionalism that Chris demonstrated throughout my course.

Lastly, I believe that Chris is very well-suited to succeed as a clerk because he has a clear vision for his career and how clerking fits within it. Chris has developed a particular interest in prosecutorial work, and I know from both our conversations and his other materials that he has worked diligently to seek out and take advantage of opportunities to prepare himself for success in this competitive arena—whether it be working as a research assistant, writing projects, internships, or student organizations. Chris has thought clearly about how being exposed to, and contributing to, the daily work of the judiciary will help him understand not only the work of an institution that he can expect to work closely with as a prosecutor, but also the many different possible approaches that prosecutors and other lawyers take in court and what he can learn from them to improve his own craft still further.

When the above is taken together, I hope that a clear picture emerges of Chris as a person who is thoughtful (a fact which he also demonstrated in class discussions of many

kinds), highly skilled, hard-working, dedicated to and capable of improving his craft no matter the obstacles, and yet kind, generous, empathetic, and a true team player. While this and the above thoughts can of course only provide a small window into the mosaic of reasons why I believe that Chris is an exceptional clerkship candidate. I hope, however, that they are still helpful in your decision-making process. Of course, if you have any questions or would like additional information, please do not hesitate to contact me at david.simson@nyls.edu or at (310) 966-0685.

Sincerely,

David Simson
Associate Professor of Law
New York Law School

May 22, 2023

Your Honor:

Please accept this enthusiastic letter of recommendation for Chris Moore to serve as a law clerk in your chambers. I had the pleasure of working with Chris during his 2022 summer internship in the U.S. Attorney's Office and have found him to be bright, energetic, hardworking, and collaborative. I believe that Chris will make a terrific lawyer and law clerk.

I serve as an Assistant United States Attorney in the Criminal Division of the United States Attorney's Office for the Southern District of New York. I am currently on detail to the Office of the Deputy Attorney General in the Department of Justice. I had the pleasure of clerking for both a United States District Judge and a United States Circuit Judge after law school.

I worked with Chris on numerous cases during his summer in the U.S. Attorney's Office, including during the research stage, briefing, and trial. He always demonstrated an exceptional work ethic and he routinely produced high-quality work. For example, Chris's research and writing were instrumental in helping to craft a response to a motion for compassionate release. The issues in the case were complex, and the factual record was extensive. Nevertheless, Chris provided strong research about the relevant legal questions and offered excellent assistance during the brief drafting phase. In another instance, Chris provided invaluable support on a case that was headed toward trial. He helped the team dig deep into the factual record and gave excellent feedback during several opening statement and closing argument moots. Chris even stayed late and came in early as the case approached trial (entirely on his own and without being asked). He very quickly became an indispensable member of the team.

There is no question based on the summer I spent working with Chris that he is passionate about the law, motivated to by doing what is right, and genuinely excited about the prospect of serving as a law clerk. Of all the legal interns, paralegals, and other staff at the U.S. Attorney's Office with which I have worked, Chris easily ranks in the top 10%. He is intelligent, hardworking, dedicated to the mission, and a strong critical thinker. Chris can analyze complex legal issues, distill those issues into the important points, and clearly articulate legal analyses through his writing. He no doubt possesses the skills necessary to be an effective law clerk.

Thank you for your time and for considering Chris's application. It was a pleasure to work with Chris and I am delighted to offer this recommendation. Please do not hesitate to contact me with any questions. I can be reached by email at brandon.harper2@usdoj.gov.

Sincerely,

/s/ Brandon D. Harper

Brandon D. Harper

The Right to Control: A Step Too Far?

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I. Introduction

The Supreme Court is set to determine the validity of the right to control theory in *United States v. Ciminelli*. The theory is much maligned, and many in the legal community expect the Court to limit the application of the theory at the least, if not completely strike the theory down. This paper seeks to examine the validity of the theory and some questions that the Court must consider in deciding how to address the right to control. Ultimately, this paper argues that despite heavy, albeit justified, criticism of the theory, the Supreme Court should limit its use rather than abandon it completely.

II. United States v. Ciminelli

In 2012, Andrew Cuomo, New York Governor at the time, launched the "Buffalo Billion" initiative to develop the Buffalo area with $1 billion in taxpayer funds. Alain Kaloyeros, the head of the College of Nanoscale Science and Engineering ("CNSE"), hired Todd Howe, a consultant and lobbyist with connections to the Cuomo administration.[1] Through Howe, Kaloyeros was charged with developing proposals for projects under the Buffalo Billion initiative. Howe had two construction-company clients: LPCiminelli, owned by Louis Ciminelli, and COR Development Company, owned by Steven Aiello and Joseph Gerardi.[2] A year after the initiative was announced, Kaloyeros and Howe began plotting to deliver the Buffalo Billion contracts to Howe's clients.[3] Despite Kaloyeros' control over the initiative, Fort Schuyler Management Corporation ("FS") was in charge of project selection.[4]

Interested parties were notified of the need for the project through request-for-proposals and were evaluated by FS through a bidding process.[5] Kaloyeros and Howe used two methods to avoid FS's ordinary bidding process. First, Kaloyeros proposed the issuance of two RFPs, which designated the successful bidders as the "preferred developer" for the region, giving the preferred developer the opportunity to negotiate with FS before FS had even designated a specific project.[6] Second, Kaloyeros and Howe tailored these RFPs to benefit LPCiminelli and COR development. Howe, Aiello, Gerardi, and Ciminelli created a list of qualifications for preferred developers that matched the characteristics of the two companies.[7] Despite the imposition of a "blackout period" where communications between interested contractors and issuers of RFPs were only allowed in the open, the parties communicated in private.[8] In response to public scrutiny, Kaloyeros modified one of the RFP qualifications and claimed that the prior qualifications was a "typographical error."[9]

[1] Brief for Appellee, at 7, United States v. Ciminelli, No. 18-2990 (2d Cir. Aug. 29, 2019).
[2] *Id.* at 35.
[3] *Id.*
[4] *Id.* at 30.
[5] *Id.* at 32.
[6] *Id.* at 33.
[7] *Id.*
[8] *Id.* at 42.
[9] *Id.*

At the same time that Kaloyeros guaranteed Ciminelli that his company would win the contract he allowed Ciminelli to choose the second preferred developer.[10] While Kaloyeros was not involved in the official process of evaluating bids, he never disclosed his involvement with the companies.[11] As a result of their efforts, Ciminelli, and the bidder that he favored, became the preferred developers in Buffalo. LPCiminelli was awarded a $750 million construction project.[12] Despite completing the projects satisfactorily, Kaloyeros, Ciminelli, Aiello, and Gerardi were indicted for conspiracy to commit wire fraud in 2017. Ciminelli was convicted a year later and sentenced to 28 months of imprisonment. After losing in the Second Circuit, Ciminelli appealed to the Supreme Court and is now awaiting a decision.

III. Federal Mail and Wire Fraud Statutes

The federal mail and wire fraud statutes are nearly identical—the only difference between them is the means of perpetrating the fraud. The essential elements of both mail and wire fraud are (1) an intent to defraud; (2) a fraudulent scheme to obtain money or property involving material misrepresentations; and (3) use of the mails or wires to further the scheme."[13] The scheme to defraud does not have to be successful or completed for a prosecution under the statute to be successful. Thus, the prosecution does not have to show that the victims of the scheme were actually injured, only that the defendant contemplated injury to the victim. A common example of a fraud prosecution under these statutes is "phishing." This occurs when person A emails people with a false story about why they need money immediately and person B sends them $100. A fraud prosecution here would be successful, as the email soliciting money with a false story satisfies the intent to defraud, scheme to obtain money or property, and use of wires elements of the wire fraud statute. Due to the proliferation of electronic technology, these statutes apply to a wide range of behavior. As a result, they have become a favorite of white-collar prosecutors. However, there is a class of fraud cases that are pushing the limits of this statute.

IV. The Right to Control

While most fraud prosecutions require a showing that the defendant injured the victim in their tangible money or property rights, there are some cases that focus on intangible property rights. The right to control theory is a theory of fraud prosecution in which the government argues that the defendant injured the victim of an intangible property right to economically valuable information by making a misrepresentation or withholding that information from the victim.[14] This can still be proven even if the victim hasn't suffered a pecuniary loss or an injury to a more traditional property right, such as loss of ownership or possession. This theory has become a

[10] *Id.*
[11] *Id.* at 45.
[12] *Id.* at 46.
[13] 18 U.S.C. § 1341; 18 U.S.C. § 1343
[14] Jennifer Bouriat, *The Right to Control Theory--What It Is, How It Is Used, and How to Defend Against It*, 44-OCT Champion 38, 38 (explaining what the right to control theory is).

favorite of prosecutors because it allows deception in business dealings, that may otherwise go unpunished, to be prosecuted. However, not everyone is as happy about the theory's development as prosecutors. Critics frequently decry the doctrine as too broad and contend that it criminalizes a range of activity that Congress did not intend to capture through the federal fraud statutes. Before diving into the validity of the theory, it is helpful to outline in detail what elements the government must satisfy to successfully prosecute under the right to control theory.

A. The Elements of the Right to Control

Because the theory originated in, and is used most often in the Second Circuit, this Circuit's cases will form the basis for examining what the theory requires. In interpreting the fraud statutes, the Second Circuit has said that intangible rights can satisfy the property element under the mail and wire fraud statutes in certain circumstances.[15] The intangible property at issue in right to control prosecutions is "potentially valuable economic information" and the resulting effect on the victim's control of assets.[16] However, the government must still prove the traditional elements of fraud. The Second Circuit has defined those elements in a right to control prosecution as requiring that the government establish that the defendant, "(1) had an intent to defraud; (2) engaged in a fraudulent scheme to obtain money or property "involving material misrepresentations—misrepresentations that would naturally tend to influence or are capable of influencing the victim's decision-making, and (3) used the wire to further that scheme."[17] Since the last element is uncomplicated, the first two will be examined in greater detail.

i. Intent to Defraud

The intent to defraud element, as applied in right to control cases, disregards whether the victim received the benefit of the bargain, and focuses on whether the defendant's deception affected the very nature of the bargain between the defendant and the victim.[18] Fraudulent intent may be evident when "the false representations are directed to the quality, adequacy, or price of the goods themselves…because the victim is made to bargain without facts obviously essential in deciding whether to enter the bargain."[19] The defendant can be liable for fraud, even when no contract was breached and the victim appeared to have received the full economic benefit of the deal, if the misrepresentation concerns a central part of the bargain that would have affected the parties' willingness to engage in the transaction.[20] The Second Circuit has further said that satisfying the intent to defraud element requires the government to show that the defendants,

[15] *See* Carpenter v. United States, 484 U.S. 19, 25 (1987) (describing how the scope of mail fraud was not limited to tangible property rights).
[16] United States v. Finazzo, 850 F.3d 94, 108 (2d Cir. 2017).
[17] United States v. Johnson, 939 F.3d 82, 88 (2d Cir. 2019); United States v. Binday, 804 F.3d 558, 569 (2d Cir. 2015).
[18] *Johnson*, 939 F.3d at 89.
[19] *Binday*, 804 F.3d at 578.
[20] *Johnson*, 939 F.3d at 89.

"contemplated some actual, cognizable harm or injury to their victims."[21] Proving this when the focus of the scheme is intangible property is considerably more challenging than when it is tangible property or money. This is because it is not always clear that a defendant specifically contemplated harming the victim, rather than just trying to negotiate a better deal for themselves, by making false representations. Despite the difficulty, prosecutors have been able to satisfy this requirement by showing that the defendants' misrepresentations exposed the victims to unexpected economic risks.[22] This has also been shown when the defendants' misrepresentations exposed the victim to penalties that do not seem monetary on the surface. This includes the possibility of reputational damage or the loss of goodwill in their industries.[23] Lastly, this can also be found when the misrepresentations impact the quality of goods or services that the victim bargains for.[24]

ii. Material Misrepresentations

The second element that must be proved in a right to control prosecution is that the defendant engaged in a fraudulent scheme to obtain money or property involving material misrepresentations. As mentioned above, these are misrepresentations that would naturally tend to influence or are capable of influencing the victim's decision-making.[25] A misrepresentation is material if it can "influence the intended victim."[26] The court in *Johnson* instructs prosecutors that this requirement is different from the showing of fraudulent intent that requires demonstrating that the material misrepresentation must be "capable of resulting in tangible harm."[27] Thus, however subtle the line between these two elements is, it is important not to conflate the two requirements.

B. Applications of the Right to Control

Now that the elements of the theory have been described, it is helpful to see how it has played out in actual cases. There are several situations where the right to control theory has been applied, some more logical than others. The first is where the defendant injures the victim after the fact by giving the victim less than they bargained for. Application of the theory in this instance is uncontroversial because it is obvious that the victim has lost money, goods, or other property because of the defendant's scheme. As mentioned above, another way that harm is shown in right to control cases is when the defendant's misrepresentations can expose the victim to unexpected economic risks. *United States v. Binday* and *United States v. Mittelstaedt* are examples of this.

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[21] *Finazzo*, 850 F.3d at 107.
[22] *Binday*, 804 F.3d at 558.
[23] *See* United States v. Schwartz, 924 F.2d 410, 420 (2d Cir. 1991) (stating that the contemplation of harm requirement is satisfied if but-for defendants' misrepresentations the victim would not have sold equipment to them); *See also* United States v. Frank, 156 F.3d 332, 335 (2d Cir. 1998) (evaluating how exposure to fines satisfies the contemplation of harm requirement).
[24] *Binday*, 804 F.3d at 571.
[25] *Johnson*, 939 F.3d at 88.
[26] *Id.*
[27] *Id.*

i. Unexpected Economic Risks

In *Binday*, the Second Circuit upheld wire and mail fraud convictions of insurance brokers under the right to control theory where they made misrepresentations in policy applications that carried greater risk to the insurers than the insurers were aware of and had bargained for.[28] The Binday defendants submitted false information on insurance applications to conceal the fact that the applications were for "stranger-oriented life insurance" ("STOLI") policies, which are policies on individuals owned by a third-party investor who bets that the value of the policy's benefits upon the individual's death would exceed the premiums.[29] The insurance company prohibited the issuance of STOLI policies directly, but allowed an insured to resell the policy to an investor after it was issued.[30] At trial, the defendants conceded that they submitted applications with false information, but argued that they did not intend to inflict--and the insurers did not suffer--any cognizable harm. They argued that their deceit caused no differences "between the benefits reasonably anticipated by the insurers and what they actually received because there was no meaningful economic difference between STOLI and non-STOLI policies."[31] This was particularly true, according to defendants, because after the insurer issues non-STOLI policies, they are freely transferable. However, the Second Circuit rejected this argument because witnesses testified that STOLI policies had different economic characteristics and an overall expectation of reduced profitability, which the insurers would have considered in the price had they known the applications were for STOLI policies.[32] Thus defendants' misrepresentations "went to an essential element of the agreement because the insurers' belief that they were issuing non-STOLI policies significantly informed the insurers' financial expectations."[33]

United States v. Mittelstaedt provides a useful example of where a prosecution under the right to control was not upheld. The defendant was a consulting engineer for two Long Island communities that used his position to influence the town planning boards' decisions regarding real estate projects that he had an undisclosed interest in.[34] The defendant argued that the district court erred in refusing to give a proposed charge that the undisclosed information must have placed the Village at an economic disadvantage.[35] Essentially, the defendant maintained that such concealed interest must have induced "the Village to purchase the property at a higher cost than it would have otherwise paid."[36] The government argued that whether the towns suffered economic loss made no difference, "because the loss of the right to control the expenditure of public funds, through the loss of the ability to make a fully informed decision, is sufficient to constitute mail fraud."[37] The court disagreed with the Government and ruled that "where an individual standing in a fiduciary

[28] *Binday*, 804 F.3d at 558.
[29] *Id.* at 565.
[30] *Id.*
[31] *Id.* at 568-69.
[32] *Id.* at 573.
[33] *Id.* at 574
[34] United States v. Mittelstaedt, 31 F.3d 1208, 1210 (2d Cir. 1994).
[35] *Id.* at 1216.
[36] *Id.*
[37] *Id.* at 1217.

relation to another conceals material information that the fiduciary is legally obliged to disclose, that non-disclosure does not give rise to mail fraud liability unless the omission can or does result in some tangible harm."[38] Liability is determined only after the government demonstrates that the concealed information affects the ultimate value of the deal or has some form of independent value.[39] This requires that the government show more than just that the deprivation of information might have impacted where public money is spent to prove, because this lack of information does not constitute tangible harm under the mail fraud statute.[40] For a successful prosecution in this case, the government had to establish that the purpose of the omission was to cause "actual harm to the village of a pecuniary nature or that the village could have negotiated a better deal for itself if it had not been deceived."[41] Because the government failed to establish this, the jury instructions were found erroneous because they allowed for a conviction of fraud when no tangible harm was caused by the defendant's omissions.[42]

While slightly different from the traditional theory of fraud prosecutions, these examples show that the use of the right to control theory presents little controversy in some instances. This is because the injury, of unexpected economic risks, is directly tied to information that the defendant withholds from the defendant. In *Binday*, a right to control prosecution makes sense because what the victim insurers care about most is not necessarily the up-front payment on the life insurance policy, but rather the significant economic risk that STOLI policies expose them to compared to non-STOLI policies. The misrepresentations made by the defendants affect both the insurers' decisions to issue policies and the probable value that they will receive from these policies. This behavior should be captured under the fraud statutes--and the right to control does this by allowing the economic differences between the two policies to be shown as an economic harm. On the other hand, *Mittelstaedt* shows that the right to control theory has its limits by requiring that the defendant's misrepresentation be tied to a loss of economic or pecuniary value.

ii. Unclear Relation to Economic Value

While *Mittelstaedt* appears to properly restrict the use of the right to control theory, this has not been the case. The theory has applied in instances where it is not apparent that the defendant's misrepresentations affected the economic value of the deal to the defendant. In these cases, the court seems to be doing a lot of work to square them with *Mittelstaedt* holding. In *Dinome,* the defendant falsely stated his income to a bank to obtain a mortgage.[43] After being convicted of mail and wire fraud, the defendant argued on appeal that the jury instruction was at odds with *Mittelstaedt* because the instruction only stated that "the definition of property includes intangible property interests such as the right to control the use of one's own assets. This interest is injured when a person is deprived of information he would consider valuable in deciding how

[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.* at 1218.
[43] United States v. Dinome, 86 F.3d 277 (2d Cir. 1996).

to use his assets."[44] Despite the court's recognition that this instruction was at odds with *Mittelstaedt*, it still upheld the instructions because the information withheld by the defendant significantly diminished the ultimate value of the mortgage to the bank.[45] While the outcome in *Dinome* is defensible because of the effect that the misrepresentation has on the value of the mortgage, it is part of a stream of decisions that has expanded the scope of the right to control in ways that many deem troublesome.[46] But the theory's validity is not just being debated in law reviews. The federal circuits are divided on whether the theory is valid.

C. Circuit Split

While the Second Circuit was the birthplace of the theory, there has been a mixed reaction to the right to control theory among other circuits. Some circuits agree with the Second Circuit's views on the theory, some disagree, and some have issued decisions that go both ways. The Eighth Circuit has upheld the right to control theory as valid, "We determine that the right to control spending constitutes a property right. This position draws support from the Supreme Court's statement in McNally that there the jury instructions were flawed because the jury was not 'charged that to convict it must find that the Commonwealth was deprived of control over how its money was spent."[47] The Tenth Circuit has similarly found that an intangible right to control in the fraud statutes, "[W]e have recognized the intangible right to control one's property is a property interest within the purview of the mail and wire fraud statutes."[48] The Fourth Circuit also agrees with the Second Circuit, "The Government need not prove that the victim suffered a monetary loss as a result of the alleged fraud; it is sufficient that the victim was deprived of some right over its property."[49]

However, there are several circuits that disagree with the Second Circuit's views on the right to control theory. The Sixth Circuit is one of these circuits, "[The] right to control" is "not the kind of 'property' right safeguarded by the fraud statutes"; the fraud statute "is 'limited in scope to the protection of property rights,' and the ethereal right to accurate information doesn't fit that description." (quoting *McNally v. United States*, 483 U.S. 350, 360 (1987)).[50] The Ninth Circuit has also found that the right to control is not property under the fraud statutes, "the interest of the [victim] manufacturers in seeing that the products they sold were not shipped to the Soviet

[44] *Id.* at 284
[45] *Id.*
[46] United States v. Viloski, 557 Fed.Appx. 28, 34 (2d Cir. 2014) (summary order) (upholding a right to control prosecution because defendant's kickbacks prevented the victim from obtaining a better deal for itself); United States v Johnson, 945 F.3d 606 (2d Cir. 2019) (permitting a right to control prosecution because the defendant's misrepresentations about style of doing the deal affected the price of the exchange); United States v. Gatto, 986 F.3d 104 (2d Cir. 2021) (allowing a right to control prosecution because bribes could have exposed victims to penalties); *see generally* Tai H. Park, *The "Right to Control" Theory of Fraud: When Deception Without Harm Becomes A Crime*, 43 Cardozo L. Rev. 135, 165 (2021).
[47] United States v. Shyres, 898 F.2d 647, 652 (8th Cir. 1990).
[48] United States v. Welch, 327 F.3d 1081, 1108 (10th Cir. 2003).
[49] United States v. Gray, 405 F.3d 227, 234 (4th Cir. 2005).
[50] United States v. Sadler, 750 F.3d 585, 591 (6th Cir. 2014).

Bloc in violation of federal law is not 'property' of the kind that Congress intended to reach in the wire fraud statute."[51]

Lastly, both the Seventh and Third Circuits have issued decisions that both agree and disagree with the Second Circuit's view on the right to control theory. The Seventh Circuit has recognized the victim's "right to control its risk of loss."[52] However, the court has found that a university's "right to control" who receives scholarships is not a cognizable property right under the fraud statutes: "[A] university that loses the benefits of [the] amateurism [of an athlete] ... has been deprived only of an intangible right" not cognizable under the fraud statutes.[53] The Third Circuit has also issued contradictory opinions on the theory. In one case, the court contrasted "[p]urely intangible rights" with "rights in intangibles which nevertheless constitute 'property.'"[54] However, the court later affirmed that under the mail and wire fraud statutes, property rights do not need to be tangible and can include intangible forms of property.[55] Lastly, the court has distinguished *Zauber* by stating that the deprivation of property in question related to the "right to *exclusive* use of [the] property," rather than the right to control its property in a manner different than the defendant.[56]

V. What the Court Must Consider

The Court must consider several factors when they decide the right to control theory's fate this summer. This includes the potential for overcriminalization, whether the right to control is a form of property, and the potential impact of limiting the theory. Each of these factors are explored below.

A. The Potential for Overcriminalization

While the theory has been subject to many criticisms, two of the biggest arguments concern the implications that the theory has on criminal justice: that it captures behavior that it should not and that it does not provide potential defendants with notice. Some argue that this case is an example of overcriminalization wherein prosecutors and lower courts are to blame for their expansive definitions of the criminal statutes.[57] These critics argue that intangible rights were never intended to be covered by Congress through the fraud statutes.[58] The main issue here is that through broad interpretations of the statute, prosecutors can impose their own beliefs and values

[51] United States v. Bruchhausen, 977 F.2d 464, 468 (9th Cir. 1992).
[52] United States v. Catalfo, 64 F.3d 1070, 1077 (7th Cir. 1995).
[53] United States v. Walters, 997 F.2d 1219, 1226 (7th Cir. 1993).
[54] United States v. Zauber, 857 F.2d 137, 142 (3d Cir. 1988).
[55] United States v. Henry, 29 F.3d 112, 113-14 (3d Cir. 1994).
[56] United States v. Al Hedaithy, 392 F.3d 580, 603 (3d Cir. 2004).
[57] *See* Brief for Law Professors as Amicus Curiae at 16, *Ciminelli v. United States*, 142 S.Ct. 2901 (2022) [hereinafter *Law Professors*] (blaming prosecutors for the perpetuation of unfair criminal cases); *see also* Stephen F. Smith, *Overcoming Overcriminalization*, 102 J. Crim. L. & Criminology 537, 548 (2012) (describing how prosecutors make up their own notions of fraud).
[58] Smith, *supra* note 57, at 550-53.

on citizens who engage in unsavory behavior.[59] This leads to a second criticism against the right to control, and prosecutions for other intangible rights: lack of notice. Since prosecutors have used the fraud statutes in this way, it prevents the public from being on notice for what behaviors are a violation of the law.[60]

These arguments are persuasive as this prevents citizens from making informed decisions about how to conduct business dealings. There are many instances where defendants have been prosecuted for actions that they believed were within the bounds of the law. Moreover, the Second Circuit's allowance that the fraudulent intent element can be satisfied by showing that the defendant's actions exposed the victim to possible economic harm seems particularly unreasonable. While not true in every instance, exposing a counterparty to some economic risk is a natural part of doing business. Some may argue that this deters criminal behavior and encourages potential white-collar criminals to be especially careful in their negotiations, but the theory in its current form is too divergent to provide proper notice to deter these actors.[61] Thus, the dangers of overcriminalization will only be improved through a clarification of the right to control in *Ciminelli*.

B. Is the Right to Control a Form of Property?

To clarify the right to control, the Supreme Court must answer whether it is a form of property itself or whether it is incidental to property ownership. Much of the tension surrounding the right to control is focused on this question. If it is considered to be property, then fraud prosecutions under the theory would be valid. However, if the right to control is merely an incident of property ownership it would not so clearly fit within the fraud statute's definition of property. The Second Circuit has issued decisions that have gone both ways. The circuit has justified this doctrine by emphasizing that a defining feature of most property is the right to control the asset in question.[62] But in *United States v. Percoco*, the court said that the prosecution can satisfy the money or property element by showing that the defendant, "through the withholding or inaccurate reporting of information that could impact on economic decisions, deprived some person or entity of potentially valuable information."[63] Thus, one's property interests are harmed when a scheme denies him or her the right to control his or her assets by depriving him or her of information necessary to make discretionary economic decisions. This seems to apply equally to tangible and intangible assets, as the Second Circuit explained that previous cases "did not limit the scope of § 1341 to tangible as distinguished from intangible property rights."[64] Thus, in some right to control prosecutions, the intangible property at issue is potentially valuable economic information and its

[59] Law Professors, *supra* note 57, at 17.
[60] Park, *supra* note 46, at 196.
[61] *Id.*
[62] United States v. Lebedev, 932 F.3d 40, 48 (2d Cir. 2019) (internal quotation marks and alteration omitted), *cert. denied sub nom.* Gross v. United States, —— U.S. ——, 140 S. Ct. 1224, 206 L.Ed.2d 219 (2020).
[63] United States v. Percoco, 13 F.4th 158, 170 (2d Cir. 2021), *cert. granted sub nom.* Ciminelli v. United States, 213 L. Ed. 2d 1114, 142 S. Ct. 2901 (2022).
[64] Carpenter v. United States, 484 U.S. 19, 25 (1987).

resulting effect on the control of assets; but in some cases the right to control is merely a way of getting to the tangible property rights at issue. This inconsistency has contributed significantly to the currently confused state of the doctrine.

Ciminelli offers a convincing argument for how the right to control has been improperly considered by the Second Circuit and why it should not be classified as property under the fraud statutes. Ciminelli argues that the right to control wrongly "allows for conviction on a showing that the defendant, through the withholding or inaccurate reporting of information that could impact on economic decisions, deprived some person or entity of potentially valuable economic information."[65] Ciminelli further claims that Second Circuit decisions have been inconsistent at best and that the conception of the right to control as a property right is at odds with traditional conceptions of property rights.[66] Since no traditional property interest is infringed by the withholding of complete and accurate economic information and because no right is deprived solely by withholding information, the right to control theory fails to state a traditional property fraud.[67] This is a view that has garnered support among those discussing this issue.[68]

Ciminelli, and his supporters, make a much more convincing argument than the Second Circuit. As an intangible asset, the right to control does not seem to fit into the conception of property that Congress considered in the fraud statutes. In a recent case about government impropriety, the Supreme Court has found that these statutes "do not proscribe schemes to defraud citizens of their intangible rights to honest and impartial government. . . . they bar only schemes for obtaining property."[69] This suggests that the Court is open to the idea that intangible rights, such as the right to control one's economic information, does not satisfy the property requirement under the fraud statutes and any prosecution that treats it as such would be improper. Prosecutors who wish to continue using the theory may hope that the court recognizes the right to control as an independent property right; but their hope would be misplaced. At the briefing and oral argument stages of *Ciminelli*, the government completely abandoned the theory and conceded that the Second Circuit erred in its reading of the property element.[70] This foreshadows the likelihood that the Supreme Court will dramatically limit the theory in a way that eliminates the possibility that the right to control may satisfy the property element of the fraud statutes.

C. Potential Impact of Limiting the Theory

Even though a limit to theory would provide needed clarity and notice for defendants, this does not mean that all problems would be solved. A significant impact will be felt in cases where

[65] Brief for Petitioner at 15, Ciminelli v. United States, 142 S.Ct 2901 (2022) (No. 21-1170) [hereinafter *Petitioner's Brief*].
[66] *See id.* (discussing how making informed economic decisions about one's assets was not included in common-law meanings of property).
[67] *Id.*
[68] *See* Park, supra note 34, at 174 (arguing that the right to control distorts the meaning of property); *see also* Law Professors' *supra* note 57, at 12 (insisting that the right to control is inconsistent with Supreme Court precedent and common law conceptions of property).
[69] Kelly v. United States, 140 S. Ct. 1565, 1574 (2020).
[70] Transcript of Oral Argument at 34, Ciminelli v. United States, 142 S.Ct 2901 (2022) (No. 21-1170).

the information that the defendant misrepresented is valuable to the victim for a reason other than its expected economic impact. Race and identity-conscious government contracting programs are an example of this, as prosecutors routinely rest successful fraud prosecutions on the right to control theory in these cases.[71] The Department of Transportation's Disadvantaged Business Enterprise Program ("DBE"), aims to increase the number of minority and economically disadvantaged individuals who participate in construction projects that receive federal funding.[72] In this scenario, imagine that the defendant lies about their status as a minority or economically disadvantaged individual to win a construction project bid. This is different from the *Binday* and *Mittelstaedt* cases, because the government receives what it contracted for and there is no exposure to economic harm. However, the defendant's misrepresentation would be deemed material under the right to control, as articulated by the Second Circuit, because the government may not have selected it for the job if it knew otherwise. *U.S. v. Pfeiffer*, currently pending, concerns this very issue.[73] Prosecutors charged mail and wire fraud, accusing Pfeiffer and Colton of using Colton's business, to secure for Pfeiffer's company $15.5 million in government contracts that it would otherwise have been unable to obtain because Colton's business was fraudulently qualified as a DBE. Prosecutors allege that there was no "commercially useful function" that Colton's business served.[74] The defendants filed a motion to dismiss arguing that the right to control cannot be applied because their misrepresentation bore no impact on the economic decision making of the government.[75] However, the District Court judge has delayed ruling on the defendant's motion to dismiss because of the Supreme Court's pending decisions in *Ciminelli*. If the Supreme Court does indeed limit the theory, defendants like Pfeiffer and Colton will be able to avoid prosecutions for their non-economic considerations. Prosecutors will likely criticize this, but the federal criminal justice system is not the answer for all unsavory behavior. Better solutions exist. One potential solution is to let Congress decide how to address this behavior. The same can be said for state legislatures. This may be an unsatisfactory answer, but it is the solution that is most likely to ensure fairness in the enforcement of fraud prosecutions.

VI. Conclusion

The right to control should not be completely eliminated. It is an important tool that enables prosecutors to address a number of cases that would be much more difficult to prosecute otherwise. However, the theory will undoubtedly be altered as the government abandoned it completely at oral arguments in the Supreme Court. The only question is how much. While there are valid applications of the theory that should not be upset, the Court must find a way to limit the theory without endangering the ability of prosecutors to bring cases against those that make

[71] *Id.* at 32.
[72] Disadvantaged Business Enterprise (DBE) Program, DEP'T OF TRANSP. (Nov. 25, 2022), https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise.
[73] Text Order, United States v. Pfeiffer, No. 1:16-cr-00023-RJA-MJR-2 (W.D.N.Y. July 28, 2022), ECF No. 162.
[74] *Id.*
[75] *Id.*

misrepresentations in cases like *Pfeiffer* discussed above. One way that the Court can do this is by using the limit imposed in *Mittelstaedt*: if the misrepresentation does not relate to *economic* harm, then a right to control prosecution is not possible. Critics would likely say that this does not go far enough, and that the Court should determine that the right to control is not a form of property that sustains any fraud prosecution. The problem with this is that it would likely eliminate the possibility of justifiable prosecutions in cases like *Binday* and *Dinome*. Whatever choice the Court makes, it will be worth monitoring how it implicates cases where defendants lie about their veteran status, identity, race, or other important, but non-economic, characteristics that may be important to the victim.

Applicant Details

First Name	**Harry**
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Contact Phone Number	**4843402994**

Applicant Education

BA/BS From	**Bucknell University**
Date of BA/BS	**May 2020**
JD/LLB From	**Temple University--James E. Beasley School of Law** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=23905&yr=2011**
Date of JD/LLB	**May 25, 2023**
Class Rank	**50%**
Law Review/ Journal	**Yes**
Journal(s)	**Temple Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**Yes**

Specialized Work Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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Honorable Judge Juan R. Sánchez
Philadelphia, PA

Dear Judge Sánchez,

I am a 2023 graduate of Temple University Beasley School of Law in Philadelphia, and I am interested in obtaining a clerkship for 2024. The opportunity to work with a judge like yourself would be such a privilege. I have wanted to clerk since I entered law school, as it sounds like an invaluable experience to learn and hone my skills as a researcher and writer. I am positive that my enthusiasm in writing and researching would be of value to you.

I spent my time at Temple joining an array of organizations and trying different subjects. I was awarded the privilege to be a staff editor on the Temple Law Review. I enjoyed the opportunity to be a part of the prestigious institution. I spent my second year helping edit Volumes 94 and 95, and wrote a comment on the legal issues of how musical artists get compensated in the music industry. The comment started during my summer research I conducted with Professor Olufunmilayo Arewa. I was also elected by my fellow students to be a 2L Class Senator for the Student Bar Association. I found numerous subjects interesting at law school, especially civil procedure, jurisprudence, and criminal procedure.

In my professional life, I have also worked in a wide array of subject matters. This has helped my curiosity while also helping me improve upon my skills, especially my writing. During my first year summer, I worked three different roles. I was a legal clerk at Bell & Bell, LLP. It is a Philadelphia based firm that specializes in employment law. I was able to help develop case strategy and organize documents for the cases. This included discrimination and whistleblower cases. I also was able to work with two different professors at Temple Law as a research assistant. For Professor Arewa, I did research and prepared memos on how music artists receive compensation from streaming services. I also spent time researching and preparing memos on the contracts of specific artists. For Interim Dean Rachel Rebouché, I researched and prepared memos on the pandemic's effect on telehealth and telemedicine. During my second year summer, I worked with Judge Rayford A. Means of the Philadelphia Court of Common Pleas. Working with the judge and his clerk confirmed that I wanted to clerk for the first few years of my career, as I wanted to continue to hone my research and writing skills while also having a close mentor. This is why I will be the clerk to Judge Mary Ann O'Brien of the Burlington County Superior Court in New Jersey. I know that Honorable Judge O'Brien will be providing me with great guidance, and I hope to be able to transfer my experience to another clerkship in 2024.

I would be happy to answer any questions that you have about my qualifications and experience. Thank you very much for your consideration. I can be reached at harry.morris@temple.edu or at (484) 340-2994.

Sincerely,

Harry Morris

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EDUCATION

Temple University Beasley School of Law

- Candidate for Juris Doctor, May 2023
- GPA: 3.23
- Honors:
  - Recipient of Law Faculty Scholarship
  - Staff Editor for *Temple Law Review*
- Activities:
  - Student Bar Association Class Senator

Bucknell University

- Bachelor of Arts in Economics, minor in Political Science. Graduated May 2020.

EXPERIENCE

Burlington County Superior Court
Law Clerk for Honorable Mary Ann O'Brien. August 2023 to August 2024.
Will conduct extensive research and draft opinions for Judge O'Brien in New Jersey Superior Court. Will be present in the court room with Judge O'Brien, who is assigned to the Family Division.

Philadelphia County Court of Common Pleas
Judicial Intern for Honorable Judge Rayford A. Means. Summer 2022.
Researched and drafted memos in response to sentencing appeals.

Bell & Bell LLP, Philadelphia, PA
Legal Clerk. Summer 2021.
Helped develop case strategy for employment discrimination and whistleblower cases in the Philadelphia area.

Temple University Beasley School of Law, Philadelphia, PA
Research Assistant for Professor Rachel Rebouché. Summer 2021.
Researched the pandemic's effect on telehealth.

Temple University Beasley School of Law, Philadelphia, PA
Research Assistant for Professor Olufunmilayo Arewa. Summer 2021.
Researched how music streaming services compensate artists.

ACTIVITIES

Enjoy reading classic novels, playing guitar, and long-distance running.

STUDENT INFORMATION

NAME :	Harry T. Morris
STUDENT TYPE:	Continuing Degree Seeking

Curriculum Information

CURRENT PROGRAM	
Juris Doctor	
PROGRAM:	Law--Full Time
COLLEGE:	Law, Beasley School
CAMPUS:	Main
MAJOR AND DEPARTMENT:	Law--Full Time, Law: Beasley School of Law

***Transcript type:ADV Advising Transcript is NOT Official ***

DEGREE AWARDED

AWARDED:	Juris Doctor	DEGREE DATE:	May 25, 2023

Curriculum Information

PRIMARY DEGREE						
PROGRAM:	Law--Full Time					
COLLEGE:	Law, Beasley School					
CAMPUS:	Main					
MAJOR:	Law--Full Time					
	ATTEMPT HOURS	PASSED HOURS	EARNED HOURS	GPA HOURS	QUALITY POINTS	GPA
INSTITUTION:	0.000	0.000	0.000	0.000	0.00	0.00

INSTITUTION CREDIT -Top-

TERM: 2020 FALL	
COLLEGE:	Law, Beasley School

MAJOR:	Law--Full Time
STUDENT TYPE:	First Time Professional
ACADEMIC STANDING: WHAT DOES THIS MEAN?	Not Calculated

SUBJECT	COURSE	CAMPUS	LEVEL	TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	START AND END DATES	R	CEU CONTACT HOURS
JUDO	0402	Main	LW	Civil Procedure I Ramji-Nogales, J	A-	4.000	14.68			
JUDO	0406	Main	LW	Contracts Mehra, S	B	4.000	12.00			
JUDO	0414	Main	LW	Legal Research & Writing Carpenter, L	B-	3.000	8.01			
JUDO	0420	Main	LW	Torts Rahdert, M	B+	4.000	13.32			
JUDO	0437	Main	LW	Intro to Transactional Skills Monroe, A	S	1.000	0.00			

Term Totals (Law)

	ATTEMPT HOURS	PASSED HOURS	EARNED HOURS	GPA HOURS	QUALITY POINTS	GPA
CURRENT TERM:	16.000	16.000	16.000	15.000	48.01	3.20
CUMULATIVE:	16.000	16.000	16.000	15.000	48.01	3.20

Unofficial Transcript

TERM: 2021 SPRING

COLLEGE:	Law, Beasley School
MAJOR:	Law--Full Time
STUDENT TYPE:	Continuing Degree Seeking

ACADEMIC STANDING: WHAT DOES THIS MEAN?										
SUBJECT	COURSE	CAMPUS	LEVEL	TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	START AND END DATES	R	CEU CONTACT HOURS
JUDO	0404	Main	LW	Constitutional Law Dunoff, J	B+	4.000	13.32			
JUDO	0410	Main	LW	Criminal Law I Deguzman, M	A-	3.000	11.01			
JUDO	0414	Main	LW	Legal Research & Writing Carpenter, L	B+	2.000	6.66			
JUDO	0418	Main	LW	Property Hollis, D	B	4.000	12.00			
JUDO	0550	Main	LW	Immigration Law Spiro, P	B-	3.000	8.01			

Term Totals (Law)

	ATTEMPT HOURS	PASSED HOURS	EARNED HOURS	GPA HOURS	QUALITY POINTS	GPA
CURRENT TERM:	16.000	16.000	16.000	16.000	51.00	3.19
CUMULATIVE:	32.000	32.000	32.000	31.000	99.01	3.19

Unofficial Transcript

TERM: 2021 FALL	
TERM COMMENTS:	Semester Notations:
	DCP (Corporations)
	DCP (Trusts & Estates)
COLLEGE:	Law, Beasley School
MAJOR:	Law--Full Time
STUDENT TYPE:	Continuing Degree Seeking

ACADEMIC STANDING: WHAT DOES THIS MEAN?										
SUBJECT	COURSE	CAMPUS	LEVEL	TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	START AND END DATES	R	CEU CONTACT HOURS
JUDO	0462	Main	LW	Transactional Practice I Blum, D	S	2.000	0.00			
JUDO	0508	Main	LW	Corporations Lin, C	B+	3.000	9.99			
JUDO	0602	Main	LW	Trusts & Estates Bartow, R	B	3.000	9.00			
JUDO	0905	Main	LW	Temple Law Review Reinstein, R	CR	3.000	0.00			
JUDO	5060	Main	LW	International Trade Law Dunoff, J	B-	3.000	8.01			

Term Totals (Law)

	ATTEMPT HOURS	PASSED HOURS	EARNED HOURS	GPA HOURS	QUALITY POINTS	GPA
CURRENT TERM:	14.000	14.000	14.000	9.000	27.00	3.00
CUMULATIVE:	46.000	46.000	46.000	40.000	126.01	3.15

Unofficial Transcript

TERM: 2022 SPRING	
TERM COMMENTS:	Semester Notations:
	DCP (Professional Responsiblity)
COLLEGE:	Law, Beasley School
MAJOR:	Law--Full Time
STUDENT TYPE:	Continuing Degree Seeking

ACADEMIC STANDING: WHAT DOES THIS MEAN?	Not Calculated

SUBJECT	COURSE	CAMPUS	LEVEL	TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	START AND END DATES	R	CEU CONTACT HOURS
JUDO	0416	Main	LW	Professional Responsibility Wambach, D	B	3.000	9.00			
JUDO	0463	Main	LW	Transactional Practice II Bosio, S	S+	2.000	0.00			
JUDO	0532	Main	LW	Criminal Procedure I Ouziel, L	B	3.000	9.00			
JUDO	0601	Main	LW	Sports Law Jacobsen, K	C	3.000	6.00			
JUDO	1058	Main	LW	Lawyering for Entrepreneurship Lipson, J	A	3.000	12.00			

Term Totals (Law)

	ATTEMPT HOURS	PASSED HOURS	EARNED HOURS	GPA HOURS	QUALITY POINTS	GPA
CURRENT TERM:	14.000	14.000	14.000	12.000	36.00	3.00
CUMULATIVE:	60.000	60.000	60.000	52.000	162.01	3.12

Unofficial Transcript

TERM: 2022 FALL	
COLLEGE:	Law, Beasley School
MAJOR:	Law--Full Time
STUDENT TYPE:	Continuing Degree Seeking
ACADEMIC STANDING: WHAT DOES THIS MEAN?	

ADDITIONAL STANDING: WHAT DOES THIS MEAN?	Dean's List

SUBJECT	COURSE	CAMPUS	LEVEL	TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	START AND END DATES	R	CEU CONTACT HOURS
JUDO	0540	Main	LW	Evidence Morrow, D	B+	3.000	9.99			
JUDO	0559	Main	LW	Jurisprudence Eisenhower, J	B+	2.000	6.66			
JUDO	0568	Main	LW	Family Law Cohen, A	B+	3.000	9.99			
JUDO	0876	Main	LW	Bus Mergers/Acquisitions Arewa, O	A-	3.000	11.01			
JUDO	1112	Main	LW	Law, Innov & Tech Colloquium	A-	3.000	11.01			

Term Totals (Law)

	ATTEMPT HOURS	PASSED HOURS	EARNED HOURS	GPA HOURS	QUALITY POINTS	GPA
CURRENT TERM:	14.000	14.000	14.000	14.000	48.66	3.48
CUMULATIVE:	74.000	74.000	74.000	66.000	210.67	3.19

Unofficial Transcript

TERM: 2023 SPRING	
COLLEGE:	Law, Beasley School
MAJOR:	Law--Full Time
STUDENT TYPE:	Continuing Degree Seeking
ACADEMIC STANDING: WHAT DOES THIS MEAN?	Not Calculated
LAST ACADEMIC STANDING: WHAT DOES THIS MEAN?	Not Calculated

SUBJECT	COURSE	CAMPUS	LEVEL	TITLE	GRADE	CREDIT HOURS	QUALITY POINTS	START AND END DATES	R	CEU CONTACT HOURS
JUDO	0590	Main	LW	Securities Regulation Lin, C	B+	3.000	9.99			
JUDO	0868	Main	LW	American Legal History Manners, J	B+	3.000	9.99			
JUDO	0901	Main	LW	Guided Research II Manners, J	A	2.000	8.00			
JUDO	1091	Main	LW	Private Equity and Hedge Funds Arewa, O	B+	3.000	9.99			
JUDO	5040	Main	LW	Survey of Legal Topics Walden, B	S	3.000	0.00			

Term Totals (Law)

	ATTEMPT HOURS	PASSED HOURS	EARNED HOURS	GPA HOURS	QUALITY POINTS	GPA
CURRENT TERM:	14.000	14.000	14.000	11.000	37.97	3.45
CUMULATIVE:	88.000	88.000	88.000	77.000	248.64	3.23

Unofficial Transcript

TRANSCRIPT TOTALS (LAW) -Top-

	ATTEMPT HOURS	PASSED HOURS	EARNED HOURS	GPA HOURS	QUALITY POINTS	GPA
TOTAL INSTITUTION:	88.000	88.000	88.000	77.000	248.64	3.23
TOTAL TRANSFER:	0.000	0.000	0.000	0.000	0.00	0.00

OVERALL:	88.000	88.000	88.000	77.000	248.64	3.23

June 05, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

I write to recommend Harry Morris to be a clerk in your chambers. Harry was my research assistant in the summer of 2021. I was also the faculty advisor for Harry's law review note in spring 2022. Based on my interactions with Harry and review of Harry's research and writing, I have every confidence that Harry would make an excellent clerk.

I encourage you to give Harry's clerkship candidacy the fullest consideration. If you have any questions, please do not hesitate to contact me directly.

Sincerely,

Olufunmilayo Arewa

Funmi Arewa - oarewa@temple.edu

June 12, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

Harry Morris is a very good law student, a member of the Temple Law Review, and an exceptionally amiable person. Harry would be an excellent law clerk and I am pleased to have the opportunity to recommend him to you.

Harry was a student in the Integrated Transactional Program this past academic year. The program, which I teach together with several adjuncts, integrates the learning of substantive law (Trusts & Estates and Professional Responsibility) with professional skills training (Transactional Practice I and II). Since there are three classes a week for the entire academic year, I get to know the students very well. Harry was always well prepared for class and was a frequent participant in our discussions, adding valuable insights and often a welcome touch of humor. The adjunct with whom I teach the substantive portions of the program and I recognized Harry's contributions both semesters with the Distinguished Class Performance transcript notation. The adjunct who taught Harry in the skills portion of the program in the spring semester gave Harry the S+ honor grade. Harry's performance on the examinations at the end of each semester was strong.

Harry is a mature and talented person and is a pleasure to be with. I have enjoyed my interactions with him very much and I am confident that you would value the many positive qualities that he would bring to your chambers.

Sincerely,

Robert J. Bartow
Laura H. Carnell Professor of Law and
Senior Advisor to the Dean

Robert Bartow - robert.bartow@temple.edu - 215-204-1276

How Music Streaming Services (Don't) Compensate Artists: Analyzing the Low Payout Rates to Artists and How Blockchain Technology Might be the Solution.

Music and lyrics by: Harry Morris

Faculty Advisor: Olufunmilayo Arewa

This copy has been edited to make it more readable as a writing example.

I. INTRODUCTION

The COVID-19 pandemic was massively disruptive for musical artists.[1] Concerts, one of the main income providers for artists, were completely stopped.[2] While some artists tried creative solutions to this problem, many artists became reliant primarily on their royalties for income.[3] This sudden reliance revealed all too well how dismal the payout can be from streaming services to recording artists. Artists receive extremely little from streaming service royalties, yet record labels are still seeing growth in revenue.[4] Despite the setbacks from the pandemic, the music industry is still a massive economic sector in the global economy. Based on a report cited by the Record Industry Association of America (RIAA):

> [T]he music industry contributes $170 billion to US GDP annually and supports 2.5 million jobs nationwide in core music activities like recording, streaming, and live performance, as well as adjacent fields like travel, retail, and marketing. As an export, music generates $9.1 billion in foreign sales annually. And, for every dollar created by music activities, an additional fifty cents is created in adjacent business or fields, illustrating that music consistently performs above its economic weight with a 1.5 times revenue multiplier.[5]

[1] *See* Ben Sisario, *Musicians Say Streaming Doesn't Pay. Can the Industry Change?,* NEW YORK Times (May 7, 2021), https://www.nytimes.com/2021/05/07/arts/music/streaming-music-payments.html. (detailing the personal anecdote of British singer-songwriter Nadine Shah's experience with the pandemic, where she said she was "financially crippled.")
[2] *See id.*
[3] *See id.*
[4] *See* Joshua Friedlander, *Mid-Year 2021 RIAA Revenue Statistics,* RIAA (September 13, 2021), https://www.riaa.com/wp-content/uploads/2021/09/Mid-Year-2021-RIAA-Music-Revenue-Report.pdf; *see also* Tim Ingham, *Recorded Music Grew $1.5 Billion in the Pandemic Year,* ROLLING STONE (Mar. 17, 2021), https://www.rollingstone.com/pro/news/recorded-music-billion-growth-2020-1143159/.
[5] *New Report: How Music Powers the American Economy*, RIAA (Feb. 9, 2021) https://www.riaa.com/new-report-how-music-powers-the-american-economy/.

Streaming has become the number one way in which people consume music.[6] The rise of streaming services helped reverse a decade of revenue stagnation within the music industry.[7] Streaming has fundamentally changed how people find, own, and consume music. But streaming has not fixed the massive value gap within the music industry.[8] The amount of revenue that streaming creates versus the amount of revenue an artist earns is striking.[9]

This Comment will analyze how it is that streaming has created so much revenue for streaming services and record labels, yet artists receive a disproportionally small share of that revenue. The Comment will begin with a brief history of streaming services, record labels, and the contracts of artists in Section II. The Comment will then explain the system of how streaming services compensate artists, and the flaws within that system that create the low royalty rate that artists receive. The Comment will then detail the recent developments and controversies within the music industry pertaining to streaming and artist compensation. It will also examine the Music Modernization Act which attempted to modernize the music industry and help fix that system, and other legislation that is important to the music industry. The Comment will then in Section III argue that artist compensation was not fixed by the Music Modernization Act, as the primary issue for artists is still the contracts between record labels and artists. The Comment will then argue that a remedy for the legal issues surrounding artist compensation can be found in the advancement of blockchain technology.

II. OVERVIEW

[6] Jimmy Stone, *The State of the Music Industry in 2020*, TOPTAL, https://www.toptal.com/finance/market-research-analysts/state-of-music-industry (detailing how streaming is driving the music industry's growth).
[7] *Id.*
[8] Daniel Lawrence, *Addressing the Value Gap in the Age of Digital Music Streaming*, 52 VAND. J. TRANSNAT'L L. 511, 517 (2019).
[9] *Id.*

The music industry is a legally complex matrix, with many middlemen and roadblocks. The process of an artist receiving monetary compensation from a streaming service is a long and winding road. Before exploring potential solutions to the problems of artists' income, it is important to understand how artists are paid. Part II.A of this Comment will give an overview of how, historically, artists were compensated by record labels and the contract law involved. Part II.B will then give a brief background of streaming services, and how they have come to dominate the way in which listeners consume music. Part II.C will explain the royalty system and copyright law surrounding streaming services, and why they generate such large income while artists receive such little income. Part II.D will explain important recent legislation in the music industry that has attempted to help artists, such as the Music Modernization Act. Part II.E will then explain blockchain technology and its uses in the music industry so far.

B. The History of Streaming Services

The music industry has always been an industry tied to technology.[10] The twentieth century saw the rise of recorded music and its commercialization, first on phonorecords and eventually CDs.[11] MP3s were introduced in the 1990s.[12] Peer-to-peer file sharing sites like Napster allowed individuals to share these MP3s and get them for free.[13] Napster became immensely popular, with twenty million users by March of 2000.[14] But sites like Napster quickly faced a litany of litigation that put them out of business.[15] Piracy continued to rise in the music

[10] Frances Lewis, *Slipping Through the Cracks: How Digital Music Streaming Cuts Corners on Artists' Royalty Revenues Globally*, 43 BROOK. J. INT'L L. 297, 302 (2017).
[11] *Id.*
[12] Octavia Carson, *#FREEKANYE: Federal Regulation of Record Label Contracts Could Free Recording Artists From Pseudo Slavery*, 42 T. JEFFERSON L. REV. 61, 72 (2020).
[13] *Id.*
[14] Sam Kronenberg, *Royalty Rates and Exclusives Releases Threaten Music Streaming*, 27 S. CAL. INTERDISC. L.J. 633, 636 (2018).
[15] Carson, *supra* note 53, at 72.

industry, while MP3s eventually took over the market share of legal music purchases as the iTunes store grew in popularity.[16] The internet radio provider Pandora was launched in 2005, although it took some time to capture a large user base.[17] Despite the rise of MP3s and the internet, the 2000s ended up being one of the worst decades for the recording industry economically as sales of recorded music steadily declined.[18] This downward spiral started to end in the 2010s with the rise in popularity of streaming services, spearheaded by Spotify.[19] Streaming services changed how the recording industry generates revenue.[20] Instead of individuals buying physical or digital copies of an album, recorded music is now licensed to streaming services who then pay the royalties for the songs via their advertising or subscription revenue.[21] The RIAA stated that in 2019, streaming generated seventy-five percent of the recording industry's revenue.[22]

C. How Streaming Services (Don't) Compensate Artists

It is widely reported how little artists make from streaming services.[23] But the reasons behind that are complex. Part II.C.1 will start with process of how artists are actually paid by a large streaming service like Spotify. This will include the complex copyright law governing the royalty system. That breakdown is then followed by controversies surrounding Spotify and other streaming services. This includes Part II.C.2, which covers litigation against Spotify by record

[16] *Id.*
[17] Will Brewster, *Musicology: The history of music streaming*, MIXDOWN (Apr. 23, 2021), https://mixdownmag.com.au/features/musicology-the-history-of-music-streaming/.
[18] Carson, *supra* note 53, at 72.
[19] *Id.*
[20] Bill Colitre, *Streaming Revenue,* 40 L.A. LAW. 20, 21 (2017).
[21] *Id.*
[22] Jillian Dahrooge, *The Real Slim Shady: How Spotify and Other Music Streaming Services are Taking Advantage of the Loopholes Within the Music Modernization Act*, 21 J. HIGH TECH. L. 199, 200 (2021).
[23] *See* Lesser, *supra* note 18, at 289.

labels and artists. The Comment will then outline competition between the streaming services themselves in Part II.C.3, and how this has been to the benefit and detriment of artists. This will be followed by an overview of artist unions that have emerged to combat streaming services, and certain high-profile artists who have boycotted streaming services in Part II.C.4. Part II.C.5 will then conclude with discussing the recent controversy of bots that artificially inflate artists' streaming numbers.

1. The Process of Artist Compensation from Streaming Services

Streaming revenue comes from the incredibly complex copyright licensing system.[24] It is important to note that Spotify and streaming services do not pay any artist or songwriter directly, they pay the rights-holders of the song.[25] Whenever a song is sold, distributed, used in other media, or monetized, the rights-holders of that song are paid royalties.[26] Each song has two copyrightable works: (1) the underlying music and lyrics, known as the musical composition, and (2) the sound recording.[27] The artists who compose a song will generally have the copyright of the composition (although copyright arrangements can be complex and often involve co-ownership)[28], while most often the record label of the recording artist will have the copyright of

[24] *See* Chris Marple, *The Times They Are A-Changin': How Music's Mechanical Licensing System may Have Finally Moved in the 21st Century*, 26 RICH. J.L. & TECH. 2, 2 (2020); s*ee also* BOB KOHN, KOHN ON MUSIC LICENSING (5th ed. 2019).
[25] *Loud & Clear*, SPOTIFY, https://loudandclear.byspotify.com/.
[26] *Streaming Royalties and the Starving Artist: How Musicians Make Money*, REVIEWS (May 18, 2021), https://www.reviews.com/entertainment/streaming/music-streaming-royalties/.; *see also* Amy Wang, *How Musicians Make Money – Or Don't at All – in 2018,* ROLLING STONE (Aug. 8, 2018).
[27] Marple, *supra* note 65 at 2.
[28] *Id; see also* BOBBY BORG & MICHAEL EAMES, INTRODUCTION TO MUSIC PUBLISHING FOR MUSICIANS 15 (2021)

the sound recording.[29] The official original sound recording of a song is referred to as the masters, and the ownership of the masters has led to famously contentious disputes between large artists with their record label; artists such as Taylor Swift, Prince, and Frank Ocean. [30]

The copyright holder has a set of specific controls or rights for the music.[31] The two most important rights for the song composition are the "mechanical rights" and the "performance rights."[32] Streaming services must acquire both of these royalties for the songs on their platforms.[33] These licenses are mostly acquired via the Harry Fox Agency.[34] Songwriters typically contract with a music publisher.[35] The music publisher will then act as the middleman between the artist and anyone attempting to license the song, such as Spotify or Apple Music.[36] The publisher often works with the big three Performance Right Organizations (PROs) in the United States: American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC.[37]

Streaming services must compensate the copyright owner of the sound recording as well.[38] They either negotiate directly with the record label or pay a flat fee to third-party brokers like SoundExchange.[39] Streaming services are additionally categorized by whether they are an

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[29] Daniel Hess, *The Waiting is the Hardest Part: The Music Modernization Act's Attempt to Fix Music Licensing*, U. ILL.. J.L. TECH. 7 POL'Y 187, 192 (2019).
[30] Leni, *What Does it Mean to Own Your Masters?*, AMUSE (Oct. 15, 2020), https://www.amuse.io/content/owning-your-masters.
[31] Music Managers Forum, *SongRoyalties Guide*, 7 (2019).
[32] *Id.*
[33] *See* Borg & Eames, *supra* note 69, at 51.
[34] Hess, *supra* note 70, at 192.
[35] *Id.*
[36] *Id.*
[37] *Id.* SESAC is not an acronym, but the original name of the PRO was Society of European Stage Authors and Composers. *SESAC*, CISAC, https://members.cisac.org/CisacPortal/directorySociety.do?method=detail&societyId=83.
[38] Hess, *supra* note 70, at 193.
[39] *Id.*

interactive or non-interactive service.[40] Interactive services like Spotify must get an additional license compared to a non-interactive service like Pandora.[41]

The largest streaming service in the world is Spotify.[42] There are numerous other streaming services that compete with Spotify though, such as Apple Music, Deezer, Tidal, and more.[43] Most of these big-name streaming services pay less than a cent per stream.[44] Spotify receives its revenue from its subscribers and from the advertisements that it runs on its free tier.[45] Spotify then pays around sixty-six percent of its revenue out as royalties.[46] As of 2020, Spotify had paid more than $24 billion in royalties.[47] The recording payout is typically three-quarters of what Spotify pays out to rights-holders, while publishing rights fills out the rest.[48]

Part of the criticism of Spotify is their pro rata system of royalty distribution.[49] Spotify pays out by dividing the royalties in a local market by an artist's fraction of Spotify's total streams.[50] If an artist received five percent of the total streams of a given market, then they receive five percent of the revenue generated from Spotify via ads and subscribers.[51] This means that a subscriber is compensating artists that they may have never listened to.[52] This incentivizes artists with mass appeal to "game the system" by appealing to large playlist and recommendation

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[40] *Id.*
[41] *Id* at 194.
[42] Dmitry Pastukhov, *What Music Streaming Services Pay Per Stream (And Why It Actually Doesn't Matter)*, SOUNDCHARTS (June 26, 2019), https://soundcharts.com/blog/music-streaming-rates-payouts.
[43] *Id.*
[44] *Id.*
[45] SPOTIFY, *supra* note 66.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] Sisario, *supra* note 1.
[50] SPOTIFY, *supra* note 66.
[51] Sisario, *supra* note 1.
[52] SPOTIFY, *supra* note 66.

algorithms.[53] Once a streaming service has compensated the rights-holders for a song, the revenue is then divided up between labels, artists, publishers, songwriters, lawyers, managers, and others.[54] The end result is that they payout to artists by the end of the process is minimal at best.[55]

As previously said, different streaming services must acquire different licenses.[56] Some licenses require a larger payment to the rights holders than others.[57] This has led to some shocking revelations about which streaming companies compensate more than their competitors.[58] While Spotify pays $0.003 per stream, the luxury exercise bike company Peloton pays $0.03 per stream.[59] Though both may sound inadequate, this puts Peloton at the higher end of music platforms.[60] Peloton, like other streaming services, has to attain licenses for publishing rights.[61] Peloton pays a higher royalty rate though because it has to additionally attain a public performance license.[62] Peloton's service includes public exercise classes that any of its members can join.[63] These public classes include curated music playlists which are pivotal to the success and appeal of the company.[64] Under copyright law, these public classes are akin to a live perform of the song.[65] This requires Peloton to obtain the aforementioned public performance licenses. [66]

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[53] Sisario, *supra* note 1.
[54] SPOTIFY, *supra* note 66.
[55] *See* Sisario, *supra* note 1.
[56] Hess, *supra* note 70, at 192.
[57] *See* Nitish Pahwa *How the Heck is Peloton the Best-Paying Music Streaming Service?*, SLATE, (Jul. 12, 2021), https://slate.com/culture/2021/07/peloton-music-royalties-spotify-apple-music.html/
[58] *See id.*
[59] *Id.*
[60] *See id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *See id.*
[65] *See id.*
[66] *See id.*

III. DISCUSSION

Despite the MMA's benefits, artist compensation from streaming service revenue remains too low. This is due to multiple factors. Part III.A will argue the flaws of the MMA. Artist compensation continues to be miniscule partly because of the contracts between record labels and artists. Record labels are making massive profits after years of contraction due to streaming services.[67] The reason artists are not receiving their fair share of that income is because of the contracts between record labels and artists. Part III.B will examine the existing flaws of those contracts. Part III.C will then argue that the emerging trends of blockchain technology in music could lead to fairer compensation for artists.

A. The Flaws of the Music Modernization Act

The MMA was a necessary update to American copyright law. The law modernized an industry which had been operating under antiquated laws. For all its benefits, the MMA did not solve the overall issue of artist compensation. Part III.A will breakdown the flaws and criticism of the MMA.

The MMA was controversial when it passed, as some industry titans like SiriusXM found it to be too disadvantageous to them.[68] Despite some the larger organizations lobbying against it, the act did receive general praise from artists and songwriters.[69] There remains issues though. A common criticism of the MMA is that it does not ensure that artist compensation will improve.[70] The MMA regulates streaming companies and their activities.[71] It helps streamline the process

[67] Ingham, *supra* note 4.
[68] Amy Wang, *Music Modernization Act Passes, Despite Music Industry Infighting*, ROLLING STONE (Sep. 18, 2018) https://www.rollingstone.com/pro/news/music-modernization-act-passes-despite-music-industry-726091/.
[69] *See id.*
[70] Huffman, *supra* note 38, at 545.
[71] *Id.*

for streaming companies to obtain licenses and pay royalties, but it does not ensure that those royalties will be paid out to artists at a fairer rate.[72] The issue is the current contractual relationships between artists and their record labels and publishers.[73] As Anna Huffman described it, "[t]he issue is Spotify expects record labels to pay out existing royalties to the appropriate parties, and the record label is also preoccupied with remaining profitable."[74]

Artists are not receiving high royalty rates because of the legislation. Additionally, the audit clause has come into question.[75] While the audit clause is progress compared to before the act, the issue is that the songwriter cannot audit the digital service.[76] There have been numerous anecdotal stories from artists of unpaid or unsubstantial royalties that an audit could help.[77] An audit could help songwriters gain unpaid royalties. Other problems that have been previously discussed in this Comment—such as the fake streaming bots[78]—could also be resolved via a substantial right to audit streaming services like Spotify.

B. How Artist's Contracts with Record Labels are Still a Problem

Artists are not being paid adequately because of the contracts between artists and record labels. Artists are locked into contracts that they cannot maneuverer out of, all the while receiving fractions of the value that their art creates.[79] As previously stated in this Comment,

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[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] Chris Castle, *How to Fix The Music Modernization Act's Flawed "Audit" Clause – Music Tech Solutions*, THE TRICHRODIST (Mar. 16, 2018)
[76] Wang, *supra* note 204.
[77] *See* Ben Lovejoy, *Bad metadata means billions in unpaid royalties from streaming music services*, 9TO5MAC (May 31, 2019), https://9to5mac.com/2019/05/31/royalties-from-streaming-music/; *see also* Ben Beaumont-Thomas & Dominic Rushe, *Spotify sued for $1.6bn in unpaid royalties as it reportedly files for IPO*, THE GUARDIAN (Jan. 3, 2018), https://www.theguardian.com/technology/2018/jan/03/spotify-sued-for-16bn-in-unpaid-royalties. Though the suit was later settled. Perez, *supra* note 111.
[78] *See* COMPLEX, *supra* note 138.
[79] Kessler, *supra* note 13, at 22.

many artists end up in debt to their record labels after signing with them.[80] Albums can underperform leading to artists never getting the same support from their record labels again.[81] Albums even end up getting completely shelved.[82] Artists can be trapped in perpetual record label contracts with no way out, as litigation would be too costly.[83] Artists are often struggling financially, so they are reliant on their record label for income.[84]

The MMA did help to streamline the royalty system, but it is not ensuring that artists receive a fair share of the royalty revenue. This is because music contracts still disproportionally favor the record label.[85] The labels still receive most of the revenue from royalties.[86] Royalties are also additionally divided among managers, lawyers, other songwriters, and more.[87] While record labels do provide a valuable service in the initial investment and funding of an artist, the end result is that the record label receives the bulk of the profit that an artist could or should receive.[88] While Spotify and other streaming services should continue to raise their royalty rate per stream, as long as the lion's share of the profits go to the record label rather than the artist the issue will continue.[89]

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[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] Mariana Orbay, *Songwriters v. Spotify: Is Spotify the Problem or a Symptom of the Problem?*, 48 PEPP. L. REV. 785, 815 (2021).
[85] *See* Tim Ingham, *Artist Streaming Revolt: Former Universal Germany Boss Thinks Modern Record Labels 'Keep Disproportionate Amount of Income'*, MUSIC BUSINESS WORLDWIDE (Jan. 30, 2020) https://www.musicbusinessworldwide.com/artist-streaming-revolt-former-universal-germany-boss-thinks-modern-record-labels-keep-disproportionate-amount-of-income/; *see also* Schwartz *supra* note 37.
[86] Orbay, *supra* note 220, at 815.
[87] Kessler, *supra* note 13, at 517.
[88] *See id.*
[89] Orbay, *supra* note 220, at 815.

Applicant Details

First Name	**Jacob**
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Applicant Education

BA/BS From	**North Carolina State University**
Date of BA/BS	**May 2010**
JD/LLB From	**Georgetown University Law Center** **https://www.nalplawschools.org/employer_profile?FormID=961**
Date of JD/LLB	**May 1, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Georgetown Law Journal** **Georgetown Law Technology Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

LT Jacob Morton, USN
1346 Otis Pl NW
Washington, DC 20010

June 19th, 2023

The Honorable Juan R. Sanchez
14613 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Judge Sanchez,

I am a third-year evening student at Georgetown University Law Center and a member of both the Georgetown Law Journal and the Georgetown Law Technology Review. I am writing to apply for a 2024 term clerkship in your chambers because of your background in public service and my desire to relocate to Philadelphia.

I am deeply committed to public service. While attending school at night, I have continued my service as an intelligence officer in the United States Navy. During my time in uniform, I have conducted intelligence analysis on a broad range of complex issues, including the Russian invasion of Ukraine, Chinaâ€™s naval operations in the Indo-Pacific, Iranian aggression towards allies in the Persian Gulf, the fight against ISIS in Northern Africa, and the global coronavirus pandemic. During this service, I have learned to work under conditions of significant stress. Notably, in 2019, I was charged with leading the Navyâ€™s target planning process in anticipation of a war with Iran during a period of significantly heightened geopolitical tensions. While in law school, I have also volunteered as a youth athletics coach at a local high school. Before joining the Navy, I served my community for two years as a teacher. I hope to continue in public service as your clerk.

Enclosed please find my resume, transcript, and writing sample. Letters of recommendation from Professor Caroline Fredrickson, Professor Mushtaq Gunja, and Commander Dimitri Randall will be sent under separate cover. I would welcome the chance to interview with you, and look forward to hearing from you soon. Thank you for the opportunity to apply. Please let me know if I can provide any additional information.

Very Respectfully,

LT Jacob Morton, USN

JACOB GRAY MORTON

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EDUCATION

GEORGETOWN UNIVERSITY LAW CENTER — **Washington, DC**
Juris Doctor — Expected May 2024
Activities: Georgetown Law Journal (Notes Editor), Georgetown Law Technology Review (Solicitations Editor), Outlaw (LGBTQ+ Student Affinity Group), National Security Law Specialization Program
Awards: CALI Awards for top grade in class: Challenges to Liberal Democracies, Criminal Justice, Immigration Law

KING'S COLLEGE LONDON — **London, UK**
Master of Arts, *with merit,* in Conflict, Security & Development — Dec 2011
Thesis: *See No Evil: Presidential Leadership and the Rwandan Genocide*

NORTH CAROLINA STATE UNIVERSITY — **Raleigh, NC**
Bachelor of Arts, *summa cum laude*, in History & Political Science — May 2010
Honors: Phi Beta Kappa, University Honors Program
Thesis: *Faster, Higher, Stronger: Carter, Congress and the Olympic Boycott of 1980*

EXPERIENCE

ROBINSON BRADSHAW & HINSON, P.A. — **Charlotte, NC**
Summer Associate — May 2023 – June 2023

- Conducted legal research, writing, and cite-checking in support of litigation, including motions and memoranda on disqualification, standing, and defenses to potential claims.
- Drafted alerts on regulatory trends impacting client business for distribution via email and firm web site.

UNITED STATES NAVY
Intelligence Analyst, Defense Intelligence Agency (Washington, DC) — Nov. 2019 – Present

- Spent 8 months as interim branch chief, supervising a team of 7 in producing all-source intelligence on organized crime and sanctions evasion. Helped lead team's expansion of responsibilities to include the entire Eastern Hemisphere.
- Conducted all-source intelligence analysis on criminal activities originating in North Korea and Iran. Completed in depth analyses of illicit financial activity in the UAE, worldwide gold trafficking, North Korean commodity smuggling, North Korean state corruption, and organized criminal participation in North Korean sanctions evasion.
- Supported crisis teams organizing Agency response to the killing of Qasem Soleimani, the COVID-19 pandemic, and the Russian invasion of Ukraine, drafting reports that informed decision-making as high as the Presidential and Department Secretary level.
- Served as the Command Equal Opportunity Officer, managing equal opportunity complaints and relevant training.

Chief of Targets, US Naval Forces Central Command (Manama, Bahrain) — Oct. 2018 – Nov. 2019

- Maintained target lists for potential strikes in support of a range of war plans. Notably, this included constructing from scratch the Navy's targeting plan for defense of the fleet in the event of war with Iran.
- Improved command's capacity to conduct time-sensitive, dynamic targeting against targets of opportunity in a crisis scenario.
- Developed target packages for maritime targets, including weapon assignment and collateral damage estimation.
- Performed as Intelligence Watch Officer, tracking Chinese, Russian, and Iranian naval vessels in the region.

Operations Officer / Training Officer, Fleet Intelligence Detachment (Washington, DC) — Jan. 2017 – Jul. 2018

- Led the day-to-day operations of a detachment of over 90 sailors and junior officers, including personnel travel, accommodation and coordination with other commands.
- Conducted training for detachment sailors to ensure their readiness for deployment with Carrier Strike Groups.
- Helped sailors manage personal crises, professional development, and implemented disciplinary measures as appropriate.

JACOB GRAY MORTON

980-234-0825 | jgmorton2010@gmail.com | 410 S. Main St., China Grove, NC 28023

EXPERIENCE {continued}

UNITED STATES NAVY

Intelligence Watch Officer, USS Wasp / Amphibious Squadron Six (Norfolk, VA) Aug. 2015 – Dec. 2016

- Led a watchfloor of intel specialists in the analysis and production of time-sensitive all-source and geospatial intelligence products supporting a squadron of four ships and a Marine Expeditionary Unit (MEU) (~5,000 total personnel).
- Provided intel support to the MEU and the Libyan Government during *Operation Odyssey Lightning*, a successful military campaign to drive ISIS out of the city of Sirte, Libya.
- Monitored adversary naval activity, including Russian maritime operations in the Eastern Mediterranean, Chinese maritime activity in the Gulf of Aden and Red Sea, and Iranian activity in the Persian Gulf and Gulf of Oman.

Student, Officer Candidate School (Newport, RI) / Naval Intelligence Officer Basic Course (Virginia Beach, VA) Nov. 2014 – Aug. 2015

ROWAN SALISBURY SCHOOL SYSTEM **Salisbury / China Grove, NC**

Social Studies Teacher / Swim Coach Aug. 2012 – May 2014

- Developed lesson plans, executed assessments, and managed classes of up to 30 students in 2 high poverty schools.
- Responsible for the development of students with a broad range of backgrounds, including English language learners, special needs, and economically disadvantaged students. Improved student proficiency on end of course exams.
- Coached a swim team of ~80 student athletes, achieving 2 county championships, 2 conference championships, and 1 regional runner-up finish, as well as earning the 2014 County Coach of the Year award.

ADDITIONAL ACTIVITY

- Volunteer Legal Researcher, School Justice Initiative (Washington, DC), July 2022 – Oct 2022
- Next Generation National Security Fellowship, Center for a New American Security (Washington, DC), Feb 2022 – Jan 2023
- Joint Professional Military Education Phase I, U.S. Naval War College, Aug. 2020 – Present
- Assistant Swim Coach, Thomas Edison High School (Alexandria, VA), Oct 2017 – Feb 2018 / Nov 2019 – Present

INTERESTS

- NC State University Athletics
- Swimming
- Good Bar-B-Que
- Traveling

Record of: Jacob G Morton
GUID: 836922268

Course Level: Juris Doctor

Entering Program:
Georgetown University Law Center
Juris Doctor
Major: Law

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2020							
LAWJ	001	97	Civil Procedure David Hyman	4.00	B+	13.32	
LAWJ	002	97	Contracts Anupam Chander	4.00	B+	13.32	
LAWJ	005	71	Legal Practice: Writing and Analysis Sonya Bonneau	2.00	IP	0.00	

	EHrs	QHrs	QPts	GPA
Current	8.00	8.00	26.64	3.33
Cumulative	8.00	8.00	26.64	3.33

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2021							
LAWJ	004	97	Constitutional Law I: The Federal System Randy Barnett	3.00	A	12.00	
LAWJ	005	71	Legal Practice: Writing and Analysis Sonya Bonneau	4.00	A-	14.68	
LAWJ	008	97	Torts Gregory Klass	4.00	B+	13.32	
LAWJ	611	09	Corporate Compliance in the Financial Sector: Anti-Money Laundering and Counter-Terrorism Financing Jonathan Rusch	1.00	P	0.00	

	EHrs	QHrs	QPts	GPA
Current	12.00	11.00	40.00	3.64
Annual	20.00	19.00	66.64	3.51
Cumulative	20.00	19.00	66.64	3.51

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Summer 2021							
LAWJ	003	06	Criminal Justice Mushtaq Gunja	4.00	A	16.00	
LAWJ	037	10	Immigration Law and Policy Paul Schmidt	2.00	A	8.00	

	EHrs	QHrs	QPts	GPA
Current	6.00	6.00	24.00	4.00
Cumulative	26.00	25.00	90.64	3.63

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2021							
LAWJ	025	07	Administrative Law Glen Nager	3.00	B	9.00	
LAWJ	1716	05	Advanced Constitutional Law Seminar: Challenges to Liberal Democracies Caroline Fredrickson	3.00	A+	12.99	
LAWJ	317	05	Negotiations Seminar Kondi Kleinman	3.00	A	12.00	
LAWJ	972	08	National Security Law Todd Huntley	2.00	B	6.00	

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	EHrs	QHrs	QPts	GPA
Current	11.00	11.00	39.99	3.64
Cumulative	37.00	36.00	130.63	3.63

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2022							
LAWJ	007	97	Property Jonas Anderson	4.00	B+	13.32	
LAWJ	131	05	Disability Discrimination Law Allison Nichol	3.00	A	12.00	
LAWJ	1765	50	J.D. National Security Law Specialization Program Todd Huntley		P		
LAWJ	178	09	Federal Courts and the Federal System Paul Smith	3.00	P	0.00	

	EHrs	QHrs	QPts	GPA
Current	10.00	7.00	25.32	3.62
Annual	27.00	24.00	89.31	3.72
Cumulative	47.00	43.00	155.95	3.63

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Summer 2022							
LAWJ	1447	06	Mediation Advocacy Seminar Kelly Walsh	2.00	A-	7.34	
LAWJ	165	06	Evidence John Facciola	3.00	A	12.00	
LAWJ	2021	08	International Oil & Gas Industry: Legal and Policy Seminar Alisa Hood	1.00	P	0.00	

	EHrs	QHrs	QPts	GPA
Current	6.00	5.00	19.34	3.87
Cumulative	53.00	48.00	175.29	3.65

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Fall 2022							
LAWJ	032	05	Advanced Criminal Procedure Mushtaq Gunja	2.00	B+	6.66	
LAWJ	1805	08	Courts and Congress George Everly	2.00	A	8.00	
LAWJ	195	05	Election Law: Voting, Campaigning and the Law Paul Smith	3.00	B	9.00	
LAWJ	361	07	Professional Responsibility Dolores Dorsainvil	2.00	B+	6.66	
LAWJ	4001	08	State Cyber Operations and Responses Peter Pascucci	2.00	A-	7.34	
LAWJ	440	08	Refugee Law and Policy David Neal	2.00	A	8.00	
LAWJ	672	08	War Crimes, Terrorism and International Criminal Procedure	2.00	A	8.00	

	EHrs	QHrs	QPts	GPA
Current	15.00	15.00	53.66	3.58
Cumulative	68.00	63.00	228.95	3.63

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This is not an official transcript. Courses which are in progress may also be included on this transcript.

Record of: Jacob G Morton
GUID: 836922268

Subj	Crs	Sec	Title	Crd	Grd	Pts	R
Spring 2023							
LAWJ	091	08	Comparative Constitutional Law	3.00	A-	11.01	
LAWJ	1322	05	Civil Rights Statutes and the Supreme Court Seminar	2.00	A	8.00	
LAWJ	1801	08	Global Anti-Corruption Seminar	2.00	B+	6.66	
LAWJ	215	07	Constitutional Law II: Individual Rights and Liberties	4.00	P	0.00	
LAWJ	3118	09	Information Operations in the Cyber Age: Law and Policy	2.00	A-	7.34	

Transcript Totals

	EHrs	QHrs	QPts	GPA
Current	13.00	9.00	33.01	3.67
Annual	34.00	29.00	106.01	3.66
Cumulative	81.00	72.00	261.96	3.64

End of Juris Doctor Record

June 19, 2023

The Honorable Juan Sanchez
James A. Byrne United States Courthouse
601 Market Street, Room 14613
Philadelphia, PA 19106-1729

Dear Judge Sanchez:

It is my great honor to write this letter of recommendation for Jacob Morton, an evening student at the Georgetown University Law Center. I know Jacob, both as a student in my Criminal Justice and Evidence courses and as an advisee for class selection and job-advice. As his professor, I was able to observe Jacob's analytical skills, observed his contributions to classroom discussions, and was able to evaluate his legal writing. In my more informal conversations with Jacob, I have learned about his journey to law school, what inspires him, and his eventual career aspirations. Based on my observations, I think Jacob will make a very good clerk.

Before I tell you a little bit about Jacob, I should tell you a bit about the courses in which he was enrolled. I try to teach my courses a little differently than most professors; instead of traditional lectures, both my Criminal Justice and Evidence courses are primarily problem based. I break the class up into small discussion groups several times a period, which gives me an opportunity to observe students' interactions and to help if students are struggling with a topic. In addition, I spend quite a bit of time using the Socratic method to tease out students' understanding of the material.

Jacob was a pleasure to have in both of my courses. Jacob is a bit older than most of his classmates and his maturity, calm presence and steady demeanor made him an invaluable member of the class and a very valuable contributor to class discussions. Jacob stands out in my mind for being able to identify both the surface level arguments that parties are making, while also being able to delve a couple of levels deeper to identify some of the larger concerns those arguments may bear for precedential purposes. Jacob is also the rare student who was able to analyze separate his personal political feelings from the analysis of the strengths of the Supreme Court Justice's arguments. Jacob was particularly proficient with grappling with questions of policy, which I think will make him a very fine trial lawyer one day.

I am continuously impressed with my evening students' ability to juggle work and school. As you can see from Jacob's resume, he has a full-time job as an Intelligence Analyst in the United States Navy, and as you can imagine, that job has ebbs and flows in terms of demands. When Jacob was enrolled in my Advanced Criminal Procedure course in the Fall of 2022, he had a particularly busy couple of months at work, and was unable to attend a few of the class sessions. Notwithstanding the demands on his time, I was pleased with how prepared he was when he was able to attend class and his ability to remain steady and positive in the wake of some heavy burdens at work.

In preparing this letter, I re-read both of Jacob's exams for my courses. Not surprisingly, given his excellent performance in-class, Jacob performed extremely well on the final exam in Criminal Justice, where he received an A. And I think also not surprisingly, Jacob's performance on his Advanced Criminal Procedure was also solid, though not quite as strong as in Criminal Justice. In both exams, I was pleased to be reminded of what an excellent writer he is – plain spoken, incisive, and persuasive. On the Advanced Criminal Procedure exam, I noticed that he missed a couple of issues we discussed in class in the class sessions he missed. It is impossible to know the counterfactual, of course, but I surmise that if his Fall 2022 had been a little less busy at work, he would likely have performed quite a bit better on the Advanced Criminal Procedure exam.

I have also been lucky to spend some time with Jacob outside of class as well. Perhaps it is his background in the military, but Jacob approaches every conversation respectfully and with purpose. Jacob would like to be a prosecutor, and he has approached his course selection and schedule in thoughtful ways. Jacob is articulate about how a clerkship would be useful to him in his career path and I agree that a clerkship in a trial court setting would be invaluable.

In short, I recommend Jacob without reservation. I am confident that his intelligence, steadiness, and excellent writing skills will make him a very good clerk. Please feel free to contact me if I can provide any additional information.

Sincerely,

Mushtaq Gunja
Adjunct Professor, Georgetown Law
Senior Vice President, American Council on Education
617-899-1862

Dimitri Randall, Commander, USN
(301) 956-0802
d.d.randall07@gmail.com

May 30, 2023

Dear Judge,

I am writing to enthusiastically recommend Lieutenant Jacob Morton for a position as a law clerk in your chambers. He is, without a doubt, one of the finest junior officers I have worked with during my over two decades in the Navy.

Over the past four years, as both his supervisor and mentor, I have had ample opportunity to observe Jacob's professionalism, analytic capability, and personal character. There is absolutely no doubt in my mind that he will succeed in whatever endeavor he aspires. Jacob possesses pragmatic judgement, professional maturity, good humor, and strong work ethic; all character traits of an exceptional leader and fine professional. He will be an outstanding clerk.

I first met Jacob upon his arrival to the Defense Intelligence Agency (DIA) in 2019. Since his arrival, he has provided critical intelligence analysis related to transnational organized crime in the Middle East and Asia. His work is consistently thorough, even-handed, and original. He takes initiative in seeking out new sources of information, often leveraging those sources in innovative ways to unearth analytic conclusions that sometimes elude his colleagues. Perhaps the best example of this was a months-long project he completed on illicit financial activity in the Middle East His work ultimately provided senior-level defense department decision-makers (civilian and military) with a more comprehensive view of one of the world's most notorious money laundering hubs than had previously been available. In his analysis, he considered hundreds of sources from which he was able to glean substantial insights. Moreover, when it came time to brief the results of this extraordinarily complex project, he was able to deliver the most important points in a clear, concise way that enabled senior leaders to quickly understand the issue at hand. Military and civilian leadership alike have been impressed enough with his analysis and expertise that when his branch found itself without a branch chief, a position well above his pay grade, he was selected to fill the position on an interim basis and produced very favorable results.

Jacob has consistently demonstrated an impressive ability to quickly learn, frequently adjust focus, and effectively balance and prioritize competing tasks in a high-pressure environment. These skills are consistently relied upon and recognized by his senior leadership and colleagues, and as a result he is one of the go-to members for crisis response. One such crisis was the worldwide COVID-19 pandemic, which forced DIA and other organizations to substantially change the way it did business. Despite possessing no formal background in medical intelligence, Jacob volunteered for the team focused on the problem set, quickly becoming one of its most trusted analysts. As a member of this specialized team, Jacob drafted clear, concise, daily reports that distilled for national and defense department leadership how the pandemic was affecting the operations of the world's militaries. Additionally, Jacob has been assigned to crisis teams responding to several significant international events and the Russian invasion of Ukraine,